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# **Parole In The Penal System: Towards A Relational Theory Of Penality**

**Lesley McAra MA (Edinburgh)**

**PhD Thesis  
Social Sciences  
2000**

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Lesley McAra

2000



## **ABSTRACT**

This thesis aims to develop a theoretical model which explains how the penal realm functions qua system. A second aim is to use this model to challenge a number of contemporary theories of penal transformation (as advanced in the works of Malcolm Feeley and Jonathan Simon, David Garland and Tony Bottoms).

Using empirical evidence from the Scottish Parole System, the argument is developed over the course of three case studies, each of which explores a different dimension of systemic functioning: the development of penal policy, the implementation of penal policy; and the decision-making practices of agents working within the system.

The findings from the case studies suggest that the penal system functions in a manner akin to an eco-system in which there is a high level of interdependency and struggles for power and control between key sites in the system. The relative balance of power between these sites is determined by both extra and intra-systemic processes. The nature of these processes, in turn, indicates that penal transformation is more contingent and nuanced than contemporary theories would suggest. Transformation is most likely to occur under conditions of extra or intra-systemic strain; where tensions between the cultural practices of the system and the physical and conceptual space within which it is located, become too great to be sustained.

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## CHAPTER 1

### INTRODUCTION

#### Background

Prior to the late 1970s and early 1980s, there had been relatively little *systematic* application of social theory or sociological methods of analysis to penality. Aside from a number of seminal works such as Durkheim's functionalist analysis of the role of punishment in maintaining social solidarity (Durkheim 1964a) and Rusche and Kirchheimer's application of Marxist materialism to the nature and function of particular forms of penal sanction. (Rusche and Kirchheimer 1934), penology as a discipline, tended to be empiricist in approach, descriptive and, on occasions, theoretically flat in execution (see Garland 1994). In recent years, however, the social analysis of punishment (sociological penology) has gained considerable momentum. This has been variously attributed to: the impact of Foucault's work in the late 1970s, linking punishment to power and social structures through his genealogical analysis (see Foucault 1979); the paradigm shift within criminology in the late 1960s and early 1970s (brought about by the increasing influence of interactionism and critical criminological perspectives) which had the effect of focusing attention on the political dimension of crime control and penal process; and to the looming sense of crisis within the penal system itself, in the wake of prison overcrowding, lack of confidence in prevailing penal ideologies, and increasing fiscal vulnerability (see Garland and Young 1983, Bottoms 1994).

Importantly sociological penality is not a unified body of work: indeed the nature and degree of its enduring contestability has itself become a source of debate within the discipline itself (Garland 1994 and Nelken 1994). Contemporary theories range from the neo-durkheimian approach of David Garland, through to work influenced by French post-structuralists such as Deleuze (see for example Henry and Milanovic 1996).

Although much sociological penology acknowledges the complex and contradictory nature of the object of its research - namely the penal realm - there has been relatively little *sustained* consideration of the penal system as an object of knowledge. Indeed a common feature of much contemporary penological literature is for commentators to resist the idea that the penal realm can be conceptualised as an object in its own right. Such commentators argue that the penal realm comprises a series of relatively autonomous institutions which have little in common with each other except that they are, in some way or another, concerned with crime and its control (see Shapland 1995, Adler and Longhurst 1994, Duff and Hutton 1999). As a consequence, there is a tendency within this tranche of literature for commentators to study the nature and operation of the penal system in a fragmented and compartmentalised fashion (see for example Cavadino and Dignan 1997<sup>1</sup>).

One of the main exceptions to this, is the increasingly influential body of literature on penal transformation. A dominant theme in this work is that western penal systems are undergoing profound change. As evidence, commentators point to: the growth of managerialism; the development of new penal objectives such as crime prevention and support for victims; and the trend towards bifurcated penal strategies.<sup>2</sup> The roots of this transformation have been ascribed to a range of factors including: the decline in faith in rehabilitation and correctional modes of penalty; the prisons crisis during the 1970s and 1980s; and to sociological processes such as the changing nature of social control in late capitalist societies or the growth of an underclass of the most poor and marginalised groups (Feeley and Simon 1994, Bottoms 1983 and 1994, Garland 1996). This literature is underpinned by a strong,

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<sup>1</sup> In many standard text-books on the criminal justice and/or penal system, the authors organise their chapters around different institutions, with little developed consideration of inter-agency working or the nature of other forms of connection between the institutions. The justification often given for this, is that the institutions are relatively autonomous in character. Rarely, however, do commentators take seriously the "relative" aspect of this and what it might imply with respect to systemic dynamics.

<sup>2</sup> Bifurcated penal strategies are those in which offenders are divided into two populations: high risk dangerous offenders for whom incapacitation and punishment are seen as appropriate and low risk offenders who can be dealt with safely in a non-custodial setting.

albeit implicit, sense of the penal realm as an object of knowledge (or epistemic category). The arguments with respect to transformation are predicated on the assumption that the penal realm functions in a *systematic* manner and that changes which have been discerned in one dimension of the system will filter through and alter the character of, other dimensions. However although commentators within this field have begun to make some headway towards, what may be termed, an epistemology of penalty, this aspect of their work remains relatively unarticulated and underdeveloped. Indeed (as I aim to demonstrate later in the thesis) the failure to address explicitly and engage critically with the systemic qualities of the features of penalty under review, undermines the attempts of such commentators to explain *fully* the dynamics of penal change.

If we are to take seriously the notion of the penal realm as an object of knowledge, *this forces us to engage more critically with both the epistemological questions which are underplayed in the literature (specifically what constitutes the “proper” object of knowledge: how can the penal realm be understood as an epistemic category) and also the methodological questions which flow from this (how should this object of knowledge be studied).* It is in the spirit of such inquiry that the work which forms the basis of this thesis has been conducted.

### Aims and Objectives

This thesis has two inter-related aims.

The first of these aims is to develop a theoretical model which can explain how the penal realm functions as system. It is my contention that without understanding the reciprocal relationships that exist between the complex range of elements which comprise the penal system, any account of the nature and operation of particular elements of that system would be seriously flawed. Furthermore, without an adequate explanation of systemic functioning any attempt to explore the ways in

which shifts in social, cultural or political processes impact on the nature and operation of penal forms, could only provide a partial account of penal development.

The second aim is to use this model to challenge the explanations put forward in the literature on transformation for penal change (as exemplified in particular, by the work of Feeley and Simon, Garland and Bottoms). Using empirical evidence from the Scottish penal system, I aim to demonstrate that explanations of penal change need to take more seriously, than does much of the literature: (i) the ebb and flow of power relations *within* the penal system and their impact on policy and practice; and (ii) the characteristics of the processes through which social and cultural processes are mediated by the penal system itself. It is my contention that such explanations require to be built on an understanding of systemic functioning, such as provided in the model mentioned above.

### Theorising Systematicity

Developing a theoretical model of systemic functioning presents a number of epistemological and methodological challenges. Systems are, by their very nature, dynamic: comprising the *relationships* which exist between phenomena (see Parsons 1964). Such relationships are neither visible nor quantifiable in themselves, they can only be studied by their *effects*. Moreover the study of systematicity requires a priori knowledge as to what the phenomena themselves are, which are linked together by these reciprocal relationships. Although in abstract this may seem an uncontroversial point, when one begins to explore this at an empirical level it raises a number of difficult issues. For example do the phenomena comprising the penal realm include only penal institutions, or should a distinction be made between the different types of agents which operate within and between these institutions or between the different layers of discourse to be found within the system? Does a study of the penal system via its effects also require an examination of the functioning of penality in respect of its broader social impact (which in itself may or

may not have been intended by agents operating within the system)? This also raises related questions regarding the appropriate level of analysis. To understand a system requires a macro level of analysis, one in which the commentator can stand above a set of phenomena and study it as a whole. Teasing out relationality, however, can also involve quite micro-level analysis in order to understand the specific linkages between the different elements comprising the whole. Care requires to be exercised in moving between these levels.

### *(i) Systems Theory*

Although there have been few attempts to theorise systematicity in the penal realm, within the wider disciplines of social and legal theory, a number of traditions have evolved, which have placed the systematicity of social and/or legal phenomena at the centre of enquiry (see for example Parsons 1951, Lawrence and Lorsch 1967, Luhmann 1987). From these rather broad traditions, I want to focus on two central and contrasting approaches to the understanding of social and legal systems, which are of key significance to the model of system which I am aiming to develop within this thesis. For the purpose of my argument, I have termed these approaches the “functionalist” and “autopoietic” paradigms.

#### *The Functionalist Paradigm*

The functionalist paradigm derives from a tradition within social theory spanning the structure-functionalist approach of theorists such as Parsons (1951) and Merton (1968), through to the contingency theory of the sociology of organisation and neo-Darwinist evolutionary theory as applied to social systems (for an overview see both Lawrence and Lorsch 1967a, 1967 b; and Buckley 1967).

Within the functionalist paradigm, social systems are understood as being open to the environment within which they are situated. As such, the boundaries of systems are permeable and their functions (both manifest and latent) shaped, for the most

part, by external imperatives. Conceived in this way, systems require to adapt to changes in their environment either through modifying or completely altering, their internal modes of operation. The ability to adapt to environmental pressure guarantees the reproduction, and hence survival, of the system.

According to the functionalist paradigm, the internal structures (physical attributes) of a social system are a product of and, hence, determined by, the system's overall function (see for example Parsons and Smelser 1956). These structures, therefore, will be prone to alteration or adaptation, as the function of the system itself responds to shifts in its immediate environment. The structures may be linked together by a shared order of symbolic meanings as given expression through complex networks of communication - what may be termed the "symbolic order" of the system. The close relationship between structure and function renders this symbolic order "cognitively open" and expressive, thereby, of external social, political or cultural processes (see Buckley 1968, Parsons 1981).

### *The Autopoietic Paradigm*

The autopoietic paradigm derives from the work of both social and legal theorists such as Luhmann (1986), Teubner (1993) or Zeleny (1980); although it also has strong roots in the natural sciences (see Eigen and Schuster 1979, Maturana and Varela 1988).

In contrast to the functionalist paradigm, the autopoietic paradigm conceives systems as being self-referential in character and, thereby, highly differentiated from their environment. From this perspective, the unity and identity of systems derive from their own operations, the dynamics of which are driven by their own self-description. As such, systems are able to produce their own structures and stabilise or alter them according to their own criteria (Teubner 1993). The networks of communication (the symbolic order) of systems, as a consequence, remain



cognitively closed; reflexively working back on themselves in the construction and reconstruction of meaning. This should not, however, be taken to entail that the environment has absolutely no effect on a system's mode of communication, rather the system will pick up on external media but then reconstruct and give meaning to these media according to the system's own imperatives (see Teubner 1993).<sup>3</sup>

The circularity that inheres within all of these elements (both structural and symbolic) indicates that it is only with reference to themselves that systems are ordered and reproduced (see Teubner 1993, Eigen and Schuster 1979, Varela 1981).<sup>4</sup>

### *(ii) Modelling the Penal System*

The model of system which I am to develop in the course of this thesis draws on both the functionalist and autopoietic paradigms for inspiration. It is my contention that the dynamics of the penal system are underpinned by a constant tension between the imperatives of differentiated power structures which operate within and out-with the penal realm (the functionalist dimension of system) and the tendency for bureaucracies working in the system, to develop self reflexive or, as I will term them, looping practices (the autopoietic dimension of system). While the dynamics of one or other of these dimensions may come to dominate the penal system at certain times, each is always immanent within the system. It is the dialectical inter-play between the two which is key to understanding the characteristics of penal relations and the manner in which they evolve.

The starting point for the development of this model lies in a critical reading of the literature on transformation and more specifically the work of Feeley and Simon,

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<sup>3</sup> A useful example of this is given by King and Piper (1995) on their work on juvenile justice. They claim that the legal system is autopoietic in character and, as a result, efforts to pursue welfare values through the juvenile courts are always likely to be doomed - the legal system is incapable of understanding welfare values per se and will always reconstruct them into the language of legal rights.

<sup>4</sup> Within the autopoietic paradigm there are debates regarding the precise degree of self-referentiality that is required before a system can be characterised as *truly* autopoietic. According to Teubner, for example, autopoiesis occurs only when all of the following conditions obtain: self production of *all* components of the system; self

Garland and Bottoms. These commentators have been selected as illustrative of key thematics within the literature (discussed in more detail in chapter 2). As was mentioned, the broader literature (including their work) is underpinned by an embryonic conception of systematicity. This conception contains elements of both the functionalist and autopoietic paradigms within it. With regard to the first of these, the penal system is variously described as being impelled by external factors (for example by a crisis of governance [Garland], the growth of underclass [Feeley and Simon] and the disembedding of social relations [Bottoms]); with its internal structures and modes of operation responding, thereby, to the demands of the environment within which it is situated. In respect of the autopoietic dimension, there is a suggestion within all of this literature that the shift towards managerialism has led to a degree of self-reflexivity in penal practice. It is for these reasons that this literature on transformation provides a useful *springboard* for understanding systematicity.

Using Feeley and Simon, Garland and Bottom's work, I aim to demonstrate, however, that the literature has a number of flaws. These flaws stem primarily from the tendency, mentioned earlier, to attribute changes discerned in one part of the system, to the system as a whole, without giving an account of the systemic relations which make such transformation possible. In this regard, the literature misses out an important stage of argument (precisely because its understanding of system remains relatively unarticulated and under-developed). It is through attempting to fill in the missing pieces, I will suggest, that the dialectic between the functionalist and autopoietic, self-reflexive dimensions of the system becomes evident. My argument is to be advanced in three case studies (set out in more detail below), each of which explores a different aspect of systemic functioning: the evolution of penal policy; the implementation of penal policy; and the decision-making practices of penal agents working within the system.

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maintenance of the self-producing cycles by means of hypercyclical linking; and self description as the regulation

### Challenging Explanations of Transformation

The second research aim (as noted above) is to challenge the explanations for penal change as set out in the literature on transformation (exemplified by Feeley and Simon, Garland and Bottoms). My overall argument will be that both the flaws in the method of argument outlined above, and the limited conception of system with which the literature works, serve to undermine the literature's substantive explanations for change. This argument will also be developed within the three case studies which form the heart of the thesis.

The main empirical example through which I am going to explore the above themes is the Scottish penal system; more specifically the Scottish system of parole. Much sociological penology, including the literature on transformation, has focused on larger penal systems such as those to be found in USA or England and Wales. Indeed a common feature of the literature is to treat these larger systems as if they were paradigmatic of western systems as a whole. By contrast developments in the Scottish penal system have rarely featured. Rather than being marginal to the field of enquiry, I would submit that the Scottish case merits close attention for two inter-related reasons. Firstly the Scottish system appears to have been resistant to a number of the trends identified in the literature on transformation. Within Scotland, penal welfare strategies have endured in the face of both the fiscal crises and the more profound sociological processes which commentators suggest have prompted significant shifts away from the so-called "solidarity project"<sup>5</sup> in other systems. Penal welfarism (as the term will be used in this thesis) is principally rehabilitative in orientation, focused on the promotion of both behavioural change and reintegration of offenders back into the community; and predicated on the existence of a broader political commitment to the advancement of social justice. In

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of self-production. (See Teubner 1993 pp 24).

Scotland the commitment to penal welfarism has been most evident with regard to the role of social work in the penal system and in respect of parole and early release policy. However it is arguable that penal welfare strategies have remained an important aspect of policy in other sites within the penal system, particularly with respect to prisons policy (as I shall go on to explain in chapter 3 of the thesis).

Secondly close examination of the substantive differences between Scotland and other systems covered in the literature, begins to open to question some of the more substantive explanations offered by commentators for penal transformation. The Scottish system can be used to question the causal relationship, which is assumed by this literature, between external processes and the functioning of penality. As I aim to demonstrate, it highlights the need to examine more carefully the relational and systemic qualities of the features of penality under review.

### Parole in the Penal System

As was mentioned, the main aspect of the Scottish system which is being used to explore the theoretical issues (set out above) is the Scottish system of parole. It might be thought that by focusing on only one aspect of the Scottish system, my research also falls prey to the methodological flaws I have argued can be levelled at the literature on transformation: attributing developments in one aspect of the system to the system as a whole. I would submit, however, that parole is a particularly useful source, because it constitutes a point in the penal system where a number of key elements intersect, namely social work services, prison services and, of course, the mechanisms and institutions governing parole and early release policy. It therefore provides an advantageous point (indeed nodal site within the system) through which to see how different aspects of the penal system interact. Moreover, each of the policy sites which impact on parole was firmly located within

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<sup>5</sup> The solidarity project is the term used by Garland to describe *inter alia* the penetration of welfare values into the penal system around the turn of the century and the consequent reorientation of penality (for a further discussion see Garland, 1985).

the penal welfare programme in the late 1960s and 1970s. If the penal system were undergoing a major transformation away from penal welfarism one would expect to find evidence of this within these policy areas.

*(i) The Scottish System of Parole: Background*

The system of parole in Scotland was initially established by the Criminal Justice Act 1967, with the first meetings of the Parole Board for Scotland being held in 1968.

At the time of writing, the authority for parole in Scotland lies with the Prisons (Scotland) Act 1989 and the Prisoners and Criminal Proceedings (Scotland) Act 1993 (referred to hereafter as the 1993 Act). These Acts provide the terms of reference for the Parole Board, set out the extent of the Board's powers with regard to specific case categories and (particularly in respect of the 1993 Act) enable the Secretary of State<sup>6</sup> to set out matters which the Board should take into consideration when making decisions in individual cases.

The activities of the Parole Board are supported by the Parole and Life Licence Division of the Scottish Office<sup>7</sup>. This Division is responsible, inter alia, for the provision of a secretariat for the Parole Board, for overseeing the release and supervision of prisoners on licence in the community and, in relevant cases, their recall to custody. It also has a more general role to play in the development and implementation of parole and early release policy.

As mentioned above, Scottish Prison Service (SPS) policy and practice also impinge on the parole system. In the early years of parole, the system was predicated on the

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<sup>6</sup> Since the inception of the Scottish Parliament all powers in respect of parole, formerly accruing to the Secretary of State, have been devolved to Ministers in the Scottish Executive.

<sup>7</sup> In the wake of devolution and the inception of the Scottish Parliament in 1999, the Scottish Office has undergone major reorganisation. The elements which service the policy areas devolved to the Scottish Parliament are now

assumption that prisoners would receive treatment and training during their time in custody and prisons policy was, of course, directly implicated in the provision of this. The interface between prison services and parole continues today, with SPS providing the framework and resources for the prison regimes (prisoner programmes) and specialist services which prisoners need to take advantage of, in order to demonstrate progress to the Parole Board.

In addition, prison personnel have always played an important role in the parole system through the provision of information to the Parole Board on prisoners' progress and behaviour in custody (in the form of the "PR8 report"<sup>8</sup> and, in some instances, Governors' reports). Shifts in prison policy with respect to the management and training of personnel can have implications for the nature and quality of information provided. For example prison officers now undertake more welfare work with prisoners in their capacity as personal officers. This is likely to have an impact on their knowledge and understanding of prisoners and, consequently, the nature of assessments made on prisoners' progress (see chapter 3 for more detailed discussion).

The nature and operation of parole has, in turn, a number of important consequences for prison services and policies; most directly in terms of the numbers of long-term prisoners being held in custody (which was intended to diminish over time), but also indirectly in respect of the characteristics of the prison population (with certain types of long-term prisoner -mainly those conceived as being at low risk of re-offending - being filtered out of the system), and in terms of its impact on prisoners' behaviour in custody (a key aim of parole being to provide, in effect, an incentive to good behaviour- see Kincaid Report 1989).

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known as the Scottish Executive. The elements which service the Westminster reserved policy areas continue to be known as the Scottish Office.

<sup>8</sup> Formerly known as the Comprehensive Report.

Social work too has an important role in the parole system. Social workers also provide information to the Parole Board in the form of prison social work and home circumstances reports, and are responsible for the implementation of throughcare services. (Throughcare services are social work services offered to prisoners and their families from the point of sentence, during time spent in custody, through to supervision on release in the community; the latter taking the form of either voluntary supervision or statutory supervision, as in the case of parole or life licencees). Changes in social work policy, with respect to the resourcing and management of the social work role in criminal justice, are likely, therefore, to have important implications for the overall functioning of the parole system itself.

As with prison services and policies, the day to day operation of the parole system has, in turn, important consequences for social work. The decision-making outcomes of the Parole Board determine, for the most part, the characteristics of the client-group of offenders on statutory supervision with which community-based social workers have to work. They also have implications for the types of services and resources to be developed by social work, both in prison and in the community.

### *(ii) The Case Studies*

The aspects of the parole system which form the case studies within the thesis are: the policy framework of parole; the policy implementation process as it relates to the social work contribution to parole; and the decision-making practice of the Parole Board. As was mentioned, the aim of the case studies is to explore systemic relationships as they function in these different dimensions of the penal system.

#### *Case Study A: The Policy Framework*

The first case study explores the relationship between the conceptual framework of the penal system, as given expression through the evolving framework of the policy

sites impacting on parole, and the social and cultural context in which the system is situated.

It traces the evolution of parole and early release policy, social work and prisons policy over the past 30 years and their relationships with external political and cultural processes. A particular focus is on the role of policy networks in the Scottish penal system, and the characteristics of Scottish civic culture which (as I aim to demonstrate) would appear to have acted as a break on transformative impulses within a Scottish context. As such the case study provides the opportunity to engage with the substantive explanations put forward by the Feeley and Simon, Garland and Bottoms, for penal change, highlighting their short-comings in the context of the Scottish system.

The case study is based on analysis of documents relating to the policy areas under review (such as reports of Review Committees and the former Scottish Office Home Department White Papers) together with a review of literature on contemporary political and social culture in Scotland. Further details of the methods used are included in the thesis at Annex 1.

*(ii) Case Study B: The Process of Policy Implementation*

The second case study examines the systemic relationship between policy discourse and penal practice as exemplified by the policy implementation process. As noted, the main focus here is on the social work contribution to parole, specifically the implementation of the National Objectives and Standards for Social Work Services in the Criminal Justice System and the 100 percent funding initiative.

This policy (implemented from April 1991) was aimed at improving the quantity and quality of social work criminal justice services, including those aspects of social work which service the parole system, with the aim of effecting reductions in the use of



custody and assisting offenders to address their offending behaviour and lead law-abiding lives (see McAra 1998a). The policy is particularly useful for studying systemic relationships as its implementation involved co-ordinated action between a range of divisions within the then Scottish Office (prisons, parole and life licence and of course social work services<sup>9</sup>), local authority social work departments and practitioners, as well as a number of independent sector agencies.

The case study pays particular attention to the filtering processes through which the symbolic discourse of the policy framework becomes translated into operational practice. It is based on data from 11 semi-structured interviews conducted with key personnel from within Central Government and local authority social work departments, who were involved in the development, administration and/or implementation of social work parole policy. (This included civil servants from each of the associated policy divisions, and social work practitioners, as described in more detail in Annex 1).

### *(iii) Case Study C: Parole Board Decision-making*

The final case study explores the dynamics of systemic reproduction through an examination of the decision-making practices of the Parole Board. It is developed in two parts.

Part 1 of the case study examines the mechanisms which lead to the creation and reproduction of meaning within Parole Board practice. Drawing on Jackson's model of legal decision-making, it focuses on the narrative frameworks which inhere within decisions made by the Board and their self-reflexive and self-reproductive characteristics.

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<sup>9</sup> The Scottish Prison Service gained agency status in 1993. Since the inception of the Scottish Executive, SPS has become an agency of the Scottish Executive Justice Department. The former life licence and parole division of the

Part 2 examines the nature of the bureaucratic dynamics which ultimately constrain the discursive practice of the Parole Board. As was indicated, the Board is dependent on other agencies within the penal system for the provision of services and information. A key focus of Part 2 is to explore the characteristics of the relationships between the Parole Board and these agencies and the manner in which they root or ground the Board's decision-making practice within the wider system. The case study concludes with a consideration of the dynamic equilibrium that exists between such "rooting" mechanisms and the reflexive qualities of Parole Board practice.

Case study C is based on data derived from observation of six Parole Board meetings; analysis of a sample of dossiers from cases considered at those meetings; and semi structured interviews conducted with 6 of the then 14 members of the Parole Board. Again details regarding methods and the characteristics of the samples generated from the observation and dossier data are set out in Annex 1 and 2.

### Structure of Thesis

By way of concluding this introductory chapter I want to give an outline of the structure of the thesis and the main themes to be covered in each chapter.

Chapter 2 provides an exposition of the literature on transformation and the model of system which inheres within this work. From a critical reading of the literature, a model of the relational nature of penalty is developed. Different features of this model are explored in the three case studies which follow.<sup>10</sup>

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Scottish Office and the elements of Social Work Services Group which relate to social work criminal justice services are both now part of the Scottish Executive Justice Department.

<sup>10</sup> My argument is that the three case studies help demonstrate features of the model developed in chapter 2. The case studies do not, however, cover all aspects of this model. The data on which the case studies are based (in particular case studies B and C) were derived initially from a programme of research commissioned by the then Scottish Office Home Department, evaluating the implementation of the social work criminal justice policy (see Annex 1). While other case studies could have been undertaken to explore further features of the model, my study is necessarily limited by the Scottish Office data to which I had access.

Case Study A on the evolving policy framework of parole, is set out in chapter 3; Case Study B on policy implementation is set out in chapter 4; and Case Study C on Parole Board decision-making is developed over the course of chapters 5 and 6.

Chapter 7 draws together the main strands of argument to refine the relational model of penalty developed within the thesis and to highlight the implications the model has for explanations of penal transformation.

## CHAPTER 2

### THE PENAL REALM AS SYSTEM

#### Introduction

As was mentioned in chapter 1, a common feature of much contemporary penological work is the antipathy expressed by commentators towards the concept of system as means of describing and analysing the penal realm. The main reason given for this antipathy, is that the different institutional elements which comprise the penal system, exhibit none of the qualities of a "true" system: they do not share a set of core values or ideas (Shapland 1988); nor is there a high degree of rationality between them (Adler and Longhurst, 1994). Commentators who hold to this view suggest that the term "process" better captures such features, than does "system" (see Young 1997a).

The main purpose of this chapter is to begin, in some small way, to rescue the concept of system as a mechanism through which to understand the nature and operation of the penal realm. In doing so I aim to develop a model of systemic functioning, the detailed workings of which will be explored in the three case studies following this chapter. It is my contention that those commentators who are keen to abandon the term "system" in favour of "process" share a rather narrow view as to the characteristic features of systems, namely that systems should exhibit a high degree of rationality and embrace a coherent set of values. As my model will suggest, neither of these is a necessary feature of any penal system. In practice, systems can exhibit a high level of internal irrationality or contradiction (especially during phases of strain or transformation). Similarly, while systems do need a conceptual vocabulary that shows how parts are linked, this vocabulary requires neither to comprise a coherent set of norms (the vocabulary may indeed be underpinned by competing and contradictory values), nor does it require to be

absorbed by all elements of the system to the same degree (it functions thereby as a resource for the system rather than a determining feature).

The model of systemic functioning, that I will develop, is derived from a reworking of ideas developed in the literature on penal transformation, more specifically in the respective works of Malcolm Feeley and Jonathon Simon, David Garland and Tony Bottoms. At first sight this might seem an unusual choice of literature on which to build such a model, given that the concept of system remains relatively unarticulated within this work. Nonetheless, the charting of penal transformation has led these commentators to examine in detail both the factors which play a role in shaping penal forms and their impact on relationships within and between the entities which comprise the penal realm. In this way their work lays open to scrutiny the mainsprings of the system itself, in particular the *dynamics* of the interrelationships which contribute to the reproduction and evolution of penal forms. For these reasons, as suggested in chapter 1, the literature on transformation provides an extremely valuable *starting* point for the development of any model of systematicity in penal functioning. I have chosen to focus on Feeley and Simon, Garland and Bottoms primarily because these commentators have been leading figures within this body of literature (as the number of references to their work in the broader literature ably demonstrates) and because each is representative of a number of key thematics within this literature, as will be indicated in overview of the broader literature set out below.

It is important to stress, at this juncture, that it is *not* the substantive aspects of Feeley and Simon, Garland and Bottom's respective accounts of change that will form the focus of this chapter, but rather what their arguments imply regarding relationality between different dimensions of the system (i.e. the focus will be the *scaffolding* of their work rather than its content). As indicated in chapter 1, my overall argument in the thesis is that the literature on transformation, as

exemplified in Feeley and Simon's, Garland's and Bottoms work, fails to account adequately for penal change and this is primarily because of short-comings in their understanding of (and indeed failure to address explicitly) the conception of system which inheres within their work. The critique of their substantive ideas is developed during the course of the case studies which follow this chapter (in particular Case Study A).

Developing a model of systemic functioning from a critical reading of the literature on transformation, requires some degree of prior knowledge as to the characteristic features of a system (at least in abstract form). As my point of departure in this chapter, I'm going to set out a number of core features of social and/or legal systems which, I would suggest, can be identified in the work of most protagonists of systems theory. I will then set out the key thematics of the broader literature on transformation before providing a more detailed exposition of Feeley and Simon, Garland and Bottoms accounts of change and the model of penal functioning which can be gleaned from a careful reading of their work. Following this I will offer a critical appraisal of the model, through which I aim to build up a fuller and more complex understanding of system. The chapter will finish with (what at this stage remains) a tentative account of a relational model of penalty.

### Core Features of Social and Legal Systems

As was noted, there is a broad tradition of "systems theory" within social science, encompassing a variety of different approaches to the understanding of systematicity within social and legal relations (exemplified by the functionalist and autopoietic paradigms which I mentioned in chapter 1). In spite of these variations in approach, it is possible to discern three core characteristics of systems which are common to most theories within this tradition. These characteristics are: boundary mechanisms; internal linking mechanisms; and mechanisms for systemic reproduction.

### *(i) Boundary Mechanisms*

A system requires a boundary, that is some form of external demarcation and/or internal delimitation. Boundary mechanisms contribute to the maintenance of a system as a distinctive entity, enabling its systemic status to be recognised from both an internal and external point of view. As was mentioned in chapter 1, there is some controversy amongst exponents of systems theory as to whether boundary mechanisms are “permeable” and, thereby, open to the influence of external forces or processes, or whether these boundaries turn systems into wholly discrete and closed entities (see Teubner 1993).

Boundaries may take a variety of forms. Examples from systems theory include: a legal framework (see King and Trowell 1992) which, *inter alia*, provides formal rules of operation and a normative locus for a system; a physical or environmental location (see Parsons 1967) which provides a jurisdiction or sphere of influence within which a system is able to operate and over which it has some degree of control; or modes of cognition (see Hejl 1984 and Maturana 1982) which both undergird and circumscribe perceptions of systematicity.

### *(ii) Internal Linkage*

Social and legal systems also require mechanisms which hold together the internal elements of the system. Indeed it is in these very relationships or processes that the systemic qualities of such entities are most visible. Without some degree of internal dynamism a system could hardly be said to exist.

One of the primary linking mechanisms, I would suggest, is a conceptual vocabulary shared between different elements of the system: a network of meanings to which each aspect of the system adheres (see Merton 1968, Canaris 1969, Luhmann 1992). (This should not be taken to imply that this network necessarily comprises a rational

and coherent set of norms, as indicated earlier it is possible that the values embraced by a system can be highly contradictory and irrational in nature. The significance of the network lies less in its content, and more in the fact that it is shared and guides, thereby, the perception of agents working within the system).

Systems also require conduits for communicating this vocabulary between different elements. There is a degree of controversy between systems theorists regarding the dynamics of these modes of communication. For example exponents of autopoietic theory would claim that conduits for communication operate in a cyclical fashion, working recursively back on themselves, along with other components of the system, in a self-reproductive hypercycle<sup>11</sup> (see Teubner 1993). For other theorists there may be a more linear and even hierarchic dynamic at work, with certain elements of the system dominating the modes of communication and initiating one-way (mono-modal) flows of information. (Such a linear dynamic can be discerned within structure-functionalist theories of social systems, see Merton 1968).

Although shared vocabularies and modes of communication are two key internal linkage mechanisms, it is possible to conceive of other ways in which a system is internally linked. In particular linkage may be provided by function, with systemic connections being sustained by the aims and purposes of the individuals and institutions which inhabit the system or by, what Merton has termed, the "manifest function" of the system (Merton 1968).<sup>12</sup> Function, in this respect, goes beyond mere networks of communication to practice, with linkage being supplied by purposive action.

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<sup>11</sup> The hypercycle is defined thus by Teubner (1993 pp23): "all (the system's) components... have to be self produced .. (and) the self producing cycle must be capable of maintaining itself. This is achieved through interlinking of the first self-producing cycle with a second one which makes cyclical production possible by guaranteeing the conditions of its production (hypercycle)."



### *(iii) Means of Reproduction*

According to most exponents of systems theory, social and/or legal systems are dynamic rather than static in nature, a core feature of such systems being a mechanism for systemic reproduction.

From an internal point of view, the networks of communication described above may be an important way in which a system is able to retain a degree of dynamism and, indeed, transformative potential. This is a particular feature of autopoietic theory which claims (as noted above) that systems become self reflexive and self perpetuating, reproducing themselves by constantly reconstructing the social world within their own terms (see King and Piper 1995, Teubner 1993).

From an external point of view, both the overt and also latent functioning of the system may be linked to its reproductive capabilities. This is a particular feature of theories which come within the scope of the functionalist paradigm (see chapter 1), whereby the function of a system is over-determined by broader cultural or social processes. Systemic dynamism is, thereby, provided by external stimuli.

What all of these features imply is that systems have the potential to be internally differentiated (comprising a number of different internal dimensions such as conceptual vocabulary, modes of communication etc.) and externally differentiated (in respect of the relationships between systemic boundaries and functioning, and broader social and cultural processes). The precise emphasis on internal or external differentiation will be dependent upon which systems theory is under consideration. The features also suggest that an understanding of systemic dynamics requires careful elucidation of the way in which power works over and through the system (power defined here as the ability to create effects), impelling linkages within the system and determining the degree of absorption (functionalist paradigm) or resistance and reconstruction (autopoietic paradigm) of external media.

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<sup>12</sup> In Merton's words: "the objective consequences .... which are intended and recognised by the participants in the system" (Merton 1968 pp. 105).

Having set out a number of core features of social and legal systems, I now want to explore the model of system which inheres in accounts of penal transformation and in particular those offered by Feeley and Simon, Garland and Bottoms. I am going to begin the next section with a brief exposition of the broader themes within the literature of transformation. I will then highlight the significance of Feeley and Simon, Garland and Bottom's work within this literature before setting out in detail their conceptions of systemic functioning.

### Theorising Transformation

As was mentioned in chapter 1, there is a growing (and wide-ranging) body of literature in penology which claims that profound changes are taking place with respect to both the techniques and social functions of punishment in the late twentieth century (see for example Morrison 1994, Shearing and Stenning 1985, Pratt 2000). This literature draws inspiration from the work of earlier theorists who made linkages between social and penal change, as for example Durkheim on the laws of penal evolution (1964b, 1973), Rusche and Kirchheimer on the relationship between economic structure and penal forms (1934) and, more recently, Foucault on the relationship between power and knowledge and the shift from corporal to more carceral forms of punishment in the 19th Century (1979).

There is no settled account within the literature on transformation as to the nature of the changes which are taking place in the penal system nor as to processes which have precipitated them. Some commentators argue, for example, that we are witnessing the emergence of a distinctively post-modern penal realm (see Feeley and Simon 1995, Simon 1993, Bauman 2000) and cite the increased focus on new electronic technologies, and actuarial calculations of risk as evidence for this (see Douglas 1992, Lianos 2000). Others claim that any changes which can be discerned

are merely characteristic of late or high modernity (see for example Garland 1995, Garland and Sparks 2000). Despite these variations in approach, I would submit that there are three *inter-related* thematics which are consistently to be found within the literature namely: penal crisis and narrative reconstruction; the risk society; and governance and state sovereignty.

*(i) Penal Crisis and Narrative Reconstruction*

The starting point for many accounts of transformation lies with the penal crisis which, it is claimed, beset western penal systems during the last quarter of the twentieth century.

For many commentators this crisis was precipitated by the collapse in faith in the rehabilitative ideal during the 1970s in the wake of research evidence that rehabilitative programmes were ineffective, excessively interventionist and costly (see Martinson 1974, Brody 1976, Allen 1981, Bottoms 1980). Some commentators lay particular emphasis on developments within prisons as contributing to the sense of crisis, especially the massive expansion in prisoner numbers in the 1980s and the growing concerns about prison overcrowding, the “toxic mix” of prisoners and low staff morale (see Humphry and May 1977, Fitzgerald and Sim 1980, 1982, Woolf and Tumin 1991).

A common theme within the literature is that both the crisis of penal ideology and the prisons crisis became caught up in, and were heightened by a broader crisis of legitimation which the state was experiencing at this time (see for example Cavadino and Dignan 1997, Hall et al. 1978, Garland 1996). Hall in particular has argued that governments will manufacture crises about crime as a mechanism for diverting attention away from deeper structural problems facing the state. He claims that during the 1970s the British state was experiencing a crisis of legitimacy stemming in part from economic problems and the decline in Britain's status as a major

international power in the post second world war era. In an effort to reassert authority, successive governments adopted a harsher more punitive rhetoric about crime, with a consequent drift to a more "law and order society" (Hall 1979). This latter trend is picked up by other commentators such as Bottoms, Hudson and Cavadino and Dignan who suggest that the accession to power of right wing governments (as for example the Thatcher and Major governments in Britain during the 1980s and 1990s and the Reagan and Bush presidencies in the USA) can be regarded as a key watershed in respect of developments within penal policy (see Bottoms 1994, Hudson 1993, Cavadino and Dignan 1997).

While most commentators within the literature would agree that twin impulses of penal crisis and the shift to right wing governance laid the groundwork for a major reorientation in criminological and penal discourse, there is a degree of debate as regards the precise form which this reorientation has subsequently taken.

Some commentators focus on the growth of managerialism within the penal system, arguing that the accompanying emphasis on risk management rather than promotion of behavioural change (see below) and the measurement of performance by internal indicators of bureaucratic efficiency, are beginning to alter the nature and function of punishment (see in particular McWilliams 1994, Simon 1993; Bottoms 1994, Feeley and Simon 1992). Others highlight the manner in which contradictory discourses have come to dominate: with offenders being perceived as rational calculating individuals at one end of the spectrum and monsters incapable of responsible action at the other (see Garland 1996, Pratt 2000). This is reflected in penal imagery in the drive for crime prevention strategies for the rational offender and incapacitation and greater punitiveness for those designated as dangerous (see Lianos 2000). Further contradictions identified by the literature are the push to more informalism and diversion within the system (for example the growth in reparation and mediation schemes and alternatives to prosecution or custody) at the

same time as the push for more formalism (for example the increasing importance of "rights talk" within penal discourse and the focus on just deserts) (see in particular Bottoms 1994, Garland 1995).

For some commentators these shifts indicate that criminological and penological discourse has now become more diverse and fragmented and this reflects the collapse in grand narratives heralded by post-modernity (see Ericson and Carriere, 1994, Morrison 1994, Bauman 1997, Young 1999). For others the emergent discursive forms remain firmly within the parameters of penal modernism, representing instead a more delimited and self reflexive phase of penal development (see Garland 1995).

#### *(ii) The Risk Society*

The risk society thematic takes as its starting point the increasing emphasis on risk within penal discourse mentioned above. This thematic is however heavily influenced by social theorists such as Giddens, Beck and Douglas (see Sparks 1997). These theorists argue that the discourse of risk has become all pervasive within late twentieth century societies (Beck 1992, Giddens 1991). Identification of potential danger, is shaped by and in turn shapes, a community's perception of "authority, commitment, boundaries and structure" (Douglas 1992). This has the effect of excluding or marginalizing certain groups by virtue of their perceived dangerousness, a process facilitated by the emergence of new electronic technologies which enable tracking and surveillance of threatening groups. A consequence of all of these factors is the emergence of fear as a primary mechanism in the promotion of social solidarity (see for example Beck 1992).

Those commentators who develop the thematic of risk within the literature on penal transformation, argue that these broader social changes have been responsible for the incursion of the risk discourse into crime control and penal practice (see

O'Malley 1992, Ericson and Haggerty 1997, Lianos 2000). The effect of this incursion has been more rigorous policing of both socially "included" and "excluded" groups.

With regard to the socially included, commentators have charted the growth of so-called "gated-communities" and more general urban surveillance (via CCTV cameras, increased use of private security and electronic scrutiny of personal information), a rise in what Jones has termed "digital rule" (see Jones 2000, Pease 1994, Lianos 2000). Lianos, in particular, has argued that these changes have culminated in the emergence of "automated socio-technical environments" in which technology is used to organise and monitor all human interaction. Such modes of regulation are underpinned by particular conceptions of acceptable and thereby "normal" behaviour which the individuals who colonise these environments, are required to absorb and reproduce (Lianos 2000).

In respect of the socially excluded, commentators have highlighted the ways in which the emphasis on risk and dangerousness and the existential insecurity which they produce, have provided the rationale for more incapacitative and/or punitive interventions, such as electronic tagging, the use of curfews and longer term, indeterminate prison sentences (see Bauman 2000; Pratt 2000, Bottoms 1994). One of the principal aims of penal system is now to manage dangerous populations and reduce the risk from those inhabiting the "bad lands" beyond the digitised sanctuaries described above. (see Ericson and Haggerty 1997, Lianos 2000, Davis 1992).

### *(iii) Governance and State Sovereignty*

Turning to the thematic of governance and state sovereignty, many commentators within the literature are in agreement that one of the key factors precipitating penal

change has been the gradual erosion of state sovereignty accompanied by shifts in the nature and scope of governance in advanced liberal societies.

For some this has been precipitated by the forces of globalisation (see Rose, 1999, 2000, Sparks 1997, Bauman 1997). The globalisation of capital and culture (the latter facilitated by the explosion of information technology in the late twentieth century), the increasingly transnational character of crimes, as for example money laundering, trafficking in drugs or pornography, and the pressures to develop international networks for controlling such crimes, have all contributed to the decline in state power (Sheptycki 1995; Thompson 1996; Sparks 1997, Bauman 1997). *One of the fall-outs of macro-economic transformation has been increased social polarisation and in particular rising numbers of what Sparks has termed "structurally redundant populations" (Sparks 1997).* Echoing aspects of the risk thematic described above, commentators have suggested that the gaze of contemporary penal systems has shifted perceptibly onto such excluded groups. Bauman for example argues that recent trends towards mass incarceration are indicative of a "paradigm of exclusion" in which groups left behind by the forces of globalisation become the object of "confinement, rejection and exclusion" (Bauman 1997, 2000).

Some commentators within this thematic, have identified a parallel shift to a more localised dynamic of control. According to such commentators, within advanced liberal society the state is no longer able to sustain its role as the principal provider of security within its own territorial boundaries and increasingly devolves responsibility for crime control and community safety onto active individuals and onto communities themselves (see Rose 1999, Garland 1996). Again commentators, such as O'Malley, link this devolution of responsibility to the incursion of risk into social discourse, described above. Within a risk society individuals perceived as rational subjects, have the ability to become "skilled and knowledgeable about crime

prevention and crime risks" and thereby are able to assume responsibility for aspects of crime control which formerly fell firmly within the ambit of the state (see O'Malley 1992, 1996).

Other commentators, however, place less emphasis on the processes of globalisation and localisation and instead focus on shifts in intermediate mechanisms of social control within late capitalist society, in particular the changing character of work and the family (see Bottoms 1983, Bauman 1989, Hudson 1993). This has led to an shift in the penal system from being a primary to a secondary mode of social control, a shift which has led to the displacement of rehabilitative strategies as a central penal aim (see Hudson 1987, Bottoms 1983, 1994).

#### *(iv) Transformation and Systematicity*

What makes all these thematics from the literature on transformation particularly salient for my research is the concept of systematicity which runs through them: albeit in a relatively unarticulated manner. It is my contention that the substantive changes described in the literature are predicated upon the existence of quite strong systemic relationships with regard to each of the core features of systems set out above. For example the thematic of the risk society, is underpinned by a conception of the penal system as having a relatively permeable boundary - absorbing and reconstructing itself according to shifts in modes of, predominantly external discourse. This change in discourse supplies the system with a new conceptual vocabulary; providing strong and coherent internal linkages and leading to potentially self-referential modes of systemic reproduction - the discourse of fear promoting exclusion of dangerous categories of population, the nomenclature of dangerousness reinforcing social fears leading to further exclusion (see Bauman 2000, Lianos 2000, Christie 1993). Similarly within the thematic of governance and state sovereignty, changes in broader social and economic structures flow into and



are mediated and reproduced by the penal system, at both the levels of discourse and penal practice.

It is in all of the above ways, I would suggest, that the literature embraces the concept of the penal system as an object of knowledge in its own right, rather than as a collection of fragmented, relatively autonomous agencies. This becomes much clearer, however, when the work of individual commentators within the literature is subjected to closer scrutiny. In order to develop my argument I am going to focus on the work of three sets of commentators, selected as illustrative of the key thematics described above namely: Feeley and Simon, Garland and Bottoms.

*Feeley and Simon have been selected as principal protagonists of the thematic of risk. They were two of the earliest commentators to focus on risk and are almost always cited when the thematic of risk is touched on within the literature (see for example Sparks 1997, Pratt 2000, Garland 1995).*

Garland and Bottoms have been selected as illustrative of different dimensions of the thematic of governance and state sovereignty. Garland's work highlights the *difficulties faced by advanced liberal states in providing security for their citizens* and explores the impact which this has had on crime control policies. Bottoms work focuses more on the shifts in intermediate mechanisms of social control and the manner in which these have reshaped the function of the penal system. Again both Garland and Bottoms were two of the earliest commentators to develop the thematic of governance and state sovereignty and the extent to which their work has been cited within the broader literature on transformation (particularly the work of Garland), is indicative of the level of influence which they have had.

Finally all three sets of commentators embrace aspects of the thematic of penal crisis and narrative reconstruction. Each highlights the manner in which significant

changes have occurred in penal discourse (although there are differing views as to the substance of such changes) and each highlights elements of penal crisis within their work, in particular the ideological crisis stemming from the eclipse of welfarism as a penal aim. In the following section of the chapter I am going to provide a brief exposition of their key ideas regarding transformation before exploring in more detail the concept of system which inheres in their work.

*(v) Feeley and Simon*

Feeley and Simon argue that there is a paradigm shift taking place in the penal process from old to new penology. They define old penology as an amalgam of the disparate practices which dominated European and North American penal systems until about the mid 1970s. *Old penology is associated both with correctional penal-welfare strategies and their concerns to reform and rehabilitate individual offenders and also with more punitive strategies which have laid emphasis on just deserts and proportionality of punishment.*

By contrast, new penology seeks neither to punish nor rehabilitate individual offenders. It is predominantly "actuarial", concerned with the identification and *management of groups of offenders according to the level of risk or danger which they pose.* The primary objective of the new penology is no longer to eradicate crime but to regulate it or manage it at tolerable levels (Feeley and Simon 1994).

Feeley and Simon contend that a number of recent trends provide evidence of the way in which new penology is leading to transformations in the penal process.

Firstly they argue that the language of actuarial calculation is gradually penetrating penal discourse. This language is constructed around notions of risk and probability and it conceptualises the penal process as a system which can be modelled, managed and controlled. Although they acknowledge that this actuarial language

has yet to take root within public discourse (by this they would appear to mean both public opinion and official government pronouncements), they consider that it has gained ascendancy within both academic and practitioner discourse.

Secondly the emergence of new penology has redefined older forms of penal practice. Thus probation and parole, formerly defined as mechanisms for rehabilitating offenders, are now increasingly being used as a cost effective means of controlling low risk offenders (Feeley and Simon 1995)

Thirdly they link new penology to the development of new techniques and technologies for example: the growth of electronic monitoring and surveillance systems; new statistical techniques for assessing risk and predicting dangerousness; and the development of performance indicators and monitoring mechanisms as a means of measuring the efficiency and effectiveness of systemic functioning.

Feeley and Simon's work suggests that the roots of new penology lie in the responses of governments to a number of perceived crises or tensions. They argue that new penology is one response to the perceived failures of correctional penal strategies. Other factors identified include: the pressure on resources within the penal system resulting in demands for more cost-effective accountable procedures (fiscal crisis); and an apparent acceptance on the part of governments of the existence of an underclass of the most poor and most marginalised groups in society. This underclass is considered to be incapable of re-integration into mainstream society and therefore requires to be controlled and managed. In this respect the penal system has a key role to play in the management of social fragmentation and tension.

(vi) *Garland*

While Garland would accept that the penal system is increasingly being used as a mechanism for managing social tensions, he links recent changes in penalty more explicitly to the growing recognition on the part of governments that they have a limited capacity to provide law and order within their territorial boundaries. High crime rates have become an endemic feature of contemporary societies, stemming from social arrangements characterised by “inflated expectations”, deep divisions, weak mechanisms of control and high levels of opportunities for crime (Garland 1996). The persistence of high crime rates and the consequent inability of governments to deliver security to their citizens, have undermined one of the State’s foundational claims to legitimacy.

According to Garland, the UK government has responded to this predicament (high crime rates and inability to reduce crime) in an ambivalent fashion. On one hand it has become increasingly punitive, implementing policies such as American-style boot camps for juvenile offenders and re-constructing formerly rehabilitative court disposals, such as probation, into community punishments (increased punitiveness being interpreted as symptomatic of weakened authority). On the other hand, it has adopted preventative strategies through which it has sought to devolve responsibility for crime control onto individuals, “active” communities and private agencies (so-called “responsibilisation strategies”).

These twin strategies are predicated on an official criminological discourse which is becoming increasingly bifurcated. Punitive policies are informed by what Garland terms the “criminology of the other” (offenders are differentially constituted, they are abnormal or pathological). By contrast preventative and community strategies are informed by the “criminology of the self” (offenders are normal, rational, calculating individuals capable of exercising choice).

According to Garland, persistently high crime rates have posed particular dilemmas for agencies working within the criminal justice system such as the police and the courts. Not only are they perceived to have failed in their attempts to control crime but they are faced with increasingly heavy workloads as more and more offenders are processed through the system. Garland identifies two main ways in which this problem has been addressed in penal practice: firstly by “defining deviance down” - that is by diverting cases out of the system at various stages or by lowering the level at which certain types of offence are penalised; and secondly by scaling down expectations through the redefinition of success and failure: the performance of agencies now being measured by the extent to they have met their own internal goals or targets, rather than whether they have effected broader social goals such as rehabilitation or reductions in crime rates.

Garland claims that the shifts in discourse and changes in penal practice, have led to the eclipse of penal welfarism. Instead of grand proclamations about fighting the war against crime, government policy documents set out a more modest range of objectives such as risk management, victim support or reducing the fear of crime. The overall aim is now to manage the social divisions which have precipitated the high crime rates rather than attempt to transform them through programmes for progressive social change.

*(vii) Bottoms*

The final argument I want to review is that developed by Tony Bottoms.

At first sight Bottom's work on penal change appears to be more narrowly focused than that of the commentators referred to above. His essay “The Philosophy and Politics of Punishment and Sentencing” (Bottoms, 1994), takes as its focus, for example, changes in sentencing practice. Nonetheless his arguments are situated within a broader analysis of the relationship between the changing nature and

function of punishment and the structures of post-liberal society, suggesting that they do have resonance for the penal system as a whole<sup>13</sup>.

Bottoms claims that penal practice has changed in recent years as a consequence of three key developments: the predominance of just deserts and individual rights in judicial decision-making; increased managerialism within the court process; and a greater emphasis on the concept of community in penal sanctioning (as exemplified by the re-styling of probation and community service as community punishments and in the growth of mediation and reparation schemes). He also identifies a further "political" factor impacting on sentencing change, namely populist punitiveness (Bottoms 1994).

Drawing on the work of both Garland and Giddens, Bottoms argues that the first three of these developments have been precipitated by a number of deeper historical and sociological processes. Bottoms claims that in the early decades of the century the penal system operated ostensibly as a mechanism for social integration and inclusion. Rather than crushing or breaking the spirit of the offender, the aim of the system was to normalise, to correct or, in cases of incorrigibility, to segregate. In practice, however, the system functioned in an extremely hierarchical and class-based manner. As part of the price for full rights of citizenship, the lower classes were required to uphold the norms of conduct of the "respectable" middle classes. The principle aim of penal sanctions was, accordingly, to reconstruct the predominantly lower class offender in the image of the middle classes.

As the 20th century progressed, social relationships became less class based and less hierarchical. According to Bottoms, there has been a gradual "disembedding" of

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<sup>13</sup> This is borne out by his earlier essay "Neglected Features of Contemporary Penal Systems" (Bottoms 1983) in which his ideas on the relationship between the structures of late-capitalist society and penal change are first elaborated. This essay takes as its focus the birth of community service and the rise in the use of both fines and compensation orders in the 1970s and early 1980s. The character of these disposals is analysed in the context of

relationships away from intermediate groups such the family or the local community towards a greater focus on the individual. These processes have been underpinned by changes in the nature and pattern of work (such as have occurred with the erosion of manufacturing industry and increased automation of labour processes); technological developments (such as the growth in techniques of surveillance); and the birth of the consumer culture (Bottoms, 1983, 1994).

Bottoms argues that the changing pattern of social relations is increasingly reflected within penal imagery: the offender is now regarded as an individual with the right to equal treatment rather than an obedient subject in receipt of expert and indeterminate treatment; rehabilitation has been recast as a means of effecting the responsabilisation of the individual offender; and technological developments have facilitated the shift towards managerialism within the penal system.

According to Bottoms, populist punitiveness (the “political” factor impacting on change) is less clearly linked to these social processes and, thereby, a less predictable feature of contemporary penal systems. As with Garland however, Bottoms contends that governments often use punitive policies as a mechanism for addressing the feelings of insecurity and anxiety engendered by persistently high crime levels. These high crime levels are in themselves attributable to the decline in informal mechanisms of social control associated with the disembedding of social relations described above.

#### *(viii) Dominant Themes within the Literature on Transformation*

It is clear from this brief overview of the selected literature that there is no settled account as to the character of the changes that have taken place in the penal system nor the particular processes which have precipitated them. Feeley and Simon, for example, highlight risk management as a defining element of contemporary penalty

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broader shifts in the nature and function of punishment in late capitalist society, indicating that the impact of social

whereas for Bottoms and Garland this is one aspect of a more complex set of changes. Nevertheless a number of common themes do emerge.

To begin with, all commentators are in agreement that the penal welfare programme which has dominated western penal systems for most of the 20th century has been eclipsed, to be replaced by: actuarial justice (Feeley and Simon); punitive and preventative strategies (Garland); or by a penal imagery increasingly informed by the principles of just deserts and individual rights (Bottoms).

Secondly, there is consensus that there has been a growth in managerialism and a shift towards bureaucratic administrative procedures. This has coincided with a shift away from programmes aimed at broader social change (typical of penal welfarism) towards a culture of performance indicators and internalised organisational goals.

Thirdly commentators agree that penal transformation reflects and is, in part, propelled by, deeper social and cultural processes, for example: the social tensions precipitated by the growth of an underclass (Feeley and Simon); the acceptance of high crime rates as a normal feature of western societies and the resulting crisis of governance (Garland); the changing nature of social relations, shifts in the patterns of work and technological developments typical of late capitalist societies (Bottoms).

Fourthly, and most importantly, each commentator's account of transformation indicates that penal systems have exhibited a high degree of rationality and systematicity: with different elements of systems evolving in tandem and impacting on each other. Indeed without at least an embryonic conception of systematicity, their claims regarding transformation could not make sense. This is primarily because of the inter-relationships they posit between discourse and practice;

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structures on penal forms is broad rather than narrow in scope.



characteristic of the internal linking mechanisms, which I suggested earlier, form one of the core features of social and legal systems. In each account penal transformation is predicated on shifts in discourse flowing into and reconstructing the nature and functioning of penal agencies. Feeley and Simon, for example, highlight the way in which actuarial justice has infiltrated practitioner discourse, leading to transformations in the nature of penal sanctions. Within Garland's work, although he acknowledges that official discourse is itself increasingly contradictory, there is nevertheless an assumption that changes in governmental discourse have cascaded down and reshaped the practices of agencies within the penal system. Similarly in Bottom's work, although he too highlights tensions within the developing conceptual framework of punishment, a clear association is drawn between shifts in this framework and changes in sentencing practice.

The first two of the above themes (the eclipse of penal welfarism and the growth of managerialism) relate to the *characteristics* of the changes which have taken place, the third theme (the relationship between penal forms and social processes) to *explanations* for change. By contrast the fourth theme (systemic rationality) relates to, what may be termed, the *dynamics* of the penal system, that is the relationships between the different elements or layers of the system. What all of these themes (especially the latter) suggest is that each commentator is working with a multi-layered and multi-relational conception of the penal system. It is to an exploration of this systemic conception of the penal realm that forms the focus of the next section of the chapter.

### Penalty as System

Having given an exposition of the key thematics of the literature on transformation, I now want to highlight in more detail the ways in which the ideas within this work have been built on a systemic conception of the penal realm. What I aim to do in this section is to set up the model of penalty as system which can be derived from

this work. In the final sections of the chapter I will offer a critical reading of this model, as a step towards constructing a more complete theory of systemic functioning.

*(i) The Model of Penalty as System*

The key elements of this model of penalty as system have been summarised in the following table.

TABLE 2.1: THE MODEL OF PENALTY AS SYSTEM

LEVEL OF SYSTEM		FEELEY AND SIMON	GARLAND	BOTTOMS
Internal Differentiation	Conceptual Framework (Penal Philosophies)	Managerialist/Actuarial (Unified)	Criminology Of Self vs. Criminology Of Other Punitive vs. Preventative (Contradictory)	Just Deserts Individual Rights Managerialist Community-Based Populist Punitiveness (Contradictory)
	Medium Of Expression (Representations: Discursive Practice)	Shifts In Practitioner And Academic Discourse (Different Levels Of Discursive Practice: Governmental And Public Discourse Not Experienced The Shifts Described)	Shift In Governmental Discourse (Filters Down Into Other Levels Of Discursive Practice)	Shifts In Judicial Discourse (By Implication Penetrating Elsewhere In Penal System)
	Penal Techniques/Mechanisms	Change In Penal Technique: From Punishment And/Or Rehabilitation To Risk Management	Change In Technique: From Rehabilitation/Welfarism To Punishment And Prevention	Change In Technique: From Rehabilitation/Welfarism To Responsibilisation And Punishment
	Penal Bureaucracies (Institutions)	Growth Of Managerialism: Defines Institutions	Growth Of Managerialism: Redefinition Of Goals: Systems Management (Diversion)	Growth Of Managerialism
External Differentiation	Social, Cultural And Political Processes	Growth Of Underclass	High Crime Rates Underpinned By: Increased Social Division; Inflated Expectations; Weak Control; Increased Crime Opportunities	Disembedding Of Social Relations; Changes In The Nature Of Work; Technological Changes; Growth Of Consumerism (Reflected In Penal Imagery)
	Functions (Latent And Overt)	Circumscribed: Management Of Social Tensions Not Transformation	Circumscribed: Management Of Social Divisions Not Transformation	Circumscribed: No Longer Primary Mechanism For Maintenance Of Social Control
	Modes of Reproduction and Development (Dynamics Of Change)	Crisis - Equilibrium (Social Tension: Fiscal Crisis; Ideological Crisis) Eclipse Of Welfarism A Cause Of Change	Crisis - Equilibrium (Crisis Of Governance: Centrality Of State To Penal Change) Eclipse Of Welfarism An Effect Of Change	Incremental (Shifts In Social Relations) Eclipse Of Welfarism An Effect Of Change

The table is intended to describe the multi-layered conception of the penal system which, I would argue, underpins each commentators work. It highlights the ways in which the system is both internally and externally differentiated and its principal modes of reproduction and development. It is in understanding the dynamics of the *relationships* between each of these aspects, that the systemic qualities of penalty become evident. I am going to discuss each in turn.

### *Internal Differentiation*

The system is internally differentiated between what may be broadly termed discursive or representational elements (penal philosophies or conceptual framework informing the system and the conduits for the expressions of these philosophies namely the discursive practices of agents and/or agencies within the system); technical elements (mechanisms or practices of punishment); and institutional elements (penal bureaucracies). Each of these has a key role to play in boundary maintenance.

#### *(a) Conceptual Framework*

With regard to the conceptual framework (first layer of system in the table), for Feeley and Simon the system is informed by a relatively unified, cohesive philosophy. By contrast for both Garland and Bottoms the penal system is currently underpinned by a complex set of philosophies, some elements of which stand in contradiction/tension to others. What this suggests (and this will become clearer as the discussion of the relationships between the rows on the table progresses) is that, contra the advocates of the term “process”, a system does not always require a rational or coherent conceptual framework in order to function qua system. Indeed conceptual complexity can make for greater flexibility and multiplicity of practice.

The conceptual framework itself is shaped by other layers of the system (in particular the social, cultural and political processes and the discursive practices of

key sites within the system, discussed in more detail below). It is arguable that it too may have an important role to play in shaping other layers (more especially the internal aspects of the system) by providing a vocabulary within which the nature and operation of particular forms of practice can be both understood and reconstructed. This is exemplified in Feeley and Simon's work by their claim that actuarial justice has a key role to play in the reconstruction of practitioner tasks around risk management. As a "new way of perceiving reality (actuarial justice) becomes reality itself" (Feeley and Simon 1992 pp 342). One of the implications of these arguments is that the layers in the table can be mutually constitutive: reflexively working on each other in the process of systemic reproduction.

#### *(b) Medium of Expression*

The conceptual framework of the system is given expression through the discursive practices of particular sites within the system. Each commentator highlights a different set of practices (a different medium of expression) as being system-defining at present. According to Feeley and Simon, the discursive practice of *both* practitioners (working within the system) and academics (commenting on the system) are of key significance. For Garland governmental discourse (as given expression for example in policy documents see Garland 1996) has pre-eminence whereas Bottoms focuses on shifts in judicial discourse (which, as argued above, reflect broader shifts in the penal system).

Taken as a whole, therefore, the literature indicates that there are a plurality of discursive sites (mediums of expression) operating within the penal system, ranging from the concrete (for example policy documents and decision-making practices) to the more abstractly defined (such as the expressive practices or thinking of key players), one or several of which may come to prominence at particular times. In this way, the configuration of the *hierarchy* amongst these sites has, arguably, an

important role to play in determining the nature and operation of the system as a whole.

*(c) Penal Techniques: The Practice of Punishment*

The third layer in the table relates to the different techniques or mechanisms of punishment and how these have shifted over time: in effect the conceptual framework made practice.

For Feeley and Simon the framework of actuarial justice has focused penal practice around a single dominant strategy: the management of risk. By contrast for Garland and Bottoms the contradictions in the conceptual frame are manifested in the twin track strategies of punishment and crime prevention (in the case of Garland) or punishment and responsibilisation (in the case of Bottoms). As highlighted above, this suggests that there may be an association between the complexity of the conceptual frame and the multiplicity of penal technique or strategy. Furthermore, although there may be contradictions in the conceptual frame and also tensions between different penal techniques (as highlighted particularly by Bottoms), this does not necessarily undermine the systemic nature of the relationship between these layers. This is because each technique is predicated on its own particular conceptual vocabulary (for example according to Garland the conceptual framework provided by the criminology of the self is associated with the technique of crime prevention, conversely the framework provided by the criminology of the other is more closely linked to punitive strategies). There is, therefore, a strong element of *vertical rationality* within the table between the conceptual frame and penal practice, even although the individual layers themselves contain contradictions and tensions. Importantly, the techniques of punishment are also closely linked to the *overt functioning of the system*, discussed in more detail below.

#### *(d) Penal Bureaucracies*

The fourth layer on the table describes the characteristics of the bureaucracies or agencies which put the above techniques into practice (for example local authority social work departments or the prison service); over and through which the discursive sites operate.

As was mentioned, all commentators are in agreement that the characteristics of penal institutions have been profoundly affected by the growth of managerialism. This has altered not only the overall functioning of these institutions (see below) but also, by implication, the relationships within institutions between managers and practitioners; between those taking policy decisions and those implementing them at ground level. Managerialism as a technique is intended to heighten accountability within and between institutions. It functions, thereby, as a control, tying each element within the institution to a tightly circumscribed set of organisational goals and measuring performance by the extent to which such goals have been met. The growth of managerialism implies therefore that institutions have become increasingly self-reflexive: continually reproducing themselves through the reconstruction of practice within the terms of reference set out by internal (rather than external) indicators (as emphasised particularly in Garland's work).

#### *External Differentiation*

In addition to conceptualising the penal system as internally differentiated, the reviewed literature also conceptualises it as externally "differentiated" both in terms of the social, cultural and political processes which impact on the system and in terms of the broader social functions of the system.

#### *(a) Social, Cultural and Political Processes*

The literature reviewed highlights a range of social, cultural and political processes which have played a key role in shaping the nature and operation of the penal

system. (To recap, for Feeley and Simon the key process impacting on the penal system has been the growth of the underclass, for Garland it is the crisis of governance precipitated by high crime rates, by contrast for Bottoms the processes are linked to a number of the characteristics of late capitalist societies.) The impact of these processes suggests that the penal system is, what the functionalist paradigm (outlined in chapter 1) would term, "cognitively open": absorbing and responding to changes in, and pressures wrought by, the environment within which the system is situated. In turn however, the literature, suggests that the penal system itself can work reflexively back onto the very external processes which play a role in shaping its contours. This is most clearly exemplified in Feeley and Simon's work.

According to Feeley and Simon, the language of actuarial justice has developed partly in response to the growth of an underclass incapable of reintegration into wider society. The embracing of actuarialism by the penal system in turn alters its function: no longer focused on achieving social change, the aim is now to manage the social tensions incurred by the existence of this underclass. Management of tension rather than eradication of the problem (i.e. the underclass), means that the penal system is aimed at both stabilising and reproducing the very conditions (i.e. the continued existence of an underclass) which precipitated the development of an actuarial approach to penal matters in the first place. This process is again indicative of a degree of reflexivity or what may be termed looping within the system: particular social processes contribute to changes in thinking; the outcome of the changes in thinking lead to the maintenance of these social processes which, in turn, reinforce the ways of thinking themselves.

#### *(b) Functions*

As the above argument suggests, the external processes which impact on the system are closely aligned to the overall function of the system itself. Each account of



transformation conceptualises the function of the penal system at both an overt level (comprising manifest strategies such as the punishment of offenders, crime control or crime prevention) and at a latent level (comprising, for example, the effects of penal strategies which may be neither intended nor recognised by protagonists within the system [see Merton 1969] or which may be intended but, for political or other reasons, may be less *self-consciously* projected).

All three accounts reviewed, argue that the role of the penal system has become more circumscribed. No longer an element of a broader strategy of social integration, the system operates: as means of managing social divisions and tensions (Feeley and Simon, Garland); as a secondary rather than primary mode of social control (Bottoms); and as a mechanism for the reassertion of governmental authority (Garland). The role of the penal system in these respects is akin to its latent functioning as it is not expressly promulgated by agents or agencies within the system, nor by the conceptual vocabulary framing the system.

The more overt functions of the system are focused around the offender and notions of crime control and, as such, are closely linked to the practices and techniques of punishment described above. (Thus for Feeley and Simon the overt function is risk management of offenders, for Garland the punishment of offenders and crime prevention and finally for Bottoms both the punishment of offenders and responsabilisation.) It is these functions with which agents and agencies, in the penal system, actively engage on a day to day level.

### *(c) Modes of Reproduction and Development*

The final layer in the table describes the dynamics of change, the modes of reproduction and development in each of the accounts. For both Feeley and Simon as well as Garland, penal transformation occurs through reconfiguration of the system after crisis. (According to Feeley and Simon the crisis precipitating

transformation is multidimensional, stemming from a fiscal crisis, an ideological crisis, with the collapse in faith in rehabilitation, and a social crisis prompted by the growth of the underclass. For Garland the crisis is more uni-dimensional, precipitated by a legitimisation crisis within government.) All of the crises mentioned within the literature stem initially from out-with the penal system and their effect on the system is to prompt a break-down in the existing conceptual framework and to set it off on a new trajectory. In this respect penal development is characterised by sudden breakdown and then re-equilibrium or re-stabilisation around a reconstructed conceptual vocabulary. By contrast for Bottoms, change is more incremental, with the penal system gradually evolving in tandem with broader social changes. Transformation of the conceptual vocabulary and the other internal dimensions of the system, therefore, occurs through a process of synthesis. As a consequence the system is less prone to sudden shifts in trajectory

### Critique

Thus far I have outlined the ways in which the reviewed accounts of transformation can be used to highlight the relationships which exist between the complex elements that comprise the penal system. I now want to subject a number of their assumptions about systemic relationality to a more detailed criticism, as a means of building up a more satisfactory and complete notion of the nature and operation of the penal realm as system. I am going to suggest that, overall, there are three inter-related weaknesses or omissions in the model of system which can be derived from the reviewed literature. These are: (i) the operation of power within the system; (ii) the relationship between discourse and practice; and (iii) the mediation of external processes and its relationship to the dynamics of change. Most of these stem from the tendency apparent within the literature to attribute changes which the commentators claim to have found in one aspect of the system, to changes in the penal system as a whole, without exploring the processes through which such diffusion occurs.

(i) *The Operation of Power*

As highlighted above, each of the accounts of transformation assumes that there are a plurality of discursive sites within the system (different mediums of expression ranging from policy documents [Garland], judicial decision-making [Bottoms] and practitioner thinking [Feeley and Simon]). There is also an assumption that certain of these sites are dominant. What is missing, however, is any *explanation* of the relative balance of power between these sites: *why* it is that certain sites are dominant at any one time; and *what factors* determine the nature of the hierarchy amongst the sites themselves. For example within Feeley and Simon's work it is not made clear why public discourse (namely official governmental policy discourse and wider public opinion) is currently of less significance in influencing the shape of contemporary penal relations than practitioner or academic discourse. Any competent model of system therefore requires to take more seriously the question of power relationships within and between the different layers of system. I would suggest, however, that the *causal dynamics* of these relationships (where one dimension is able to effect some degree of activity in another dimension) need careful elaboration, as it may be that the absences, or breakdowns of power relationships between sites within the system, have as much of a role in shaping activity than the presence of such relationships: a practice which I will term "negative relationality" (taken up in more detail in chapters 4 and 6).

In a similar vein, a more satisfactory model of system would require to clarify the relationship between the mediums of expression and the institutional settings over and through which they operate. The plurality of discursive sites indicates that institutions are internally differentiated in a number of ways (for example between the operational practices of the institution and representations of such practices, as set out in policy documents, and between the types of individuals initiating and putting into practice key policies, such as managers and those working in the field).

The power dynamic within an institution, in terms of who currently has the power to shape its activities, and also between different institutions may be of great significance in determining the character of the penal realm at particular junctures.

*(ii) The Relationship between Discourse and Practice*

The second weakness that can be identified in the literature reviewed, concerns the relationship between discourse and practice. What is not explored within these accounts are the *processes* through which the conceptual framework is mediated, via the representational elements/discursive sites, into practice; i.e. the processes through which discourse is able to transform practice. There is an implicit assumption in all of the literature reviewed that the conceptual framework will cascade into practice in a relatively uncomplicated way.<sup>14</sup> If, as I have suggested, there are power struggles within and across various discursive sites and institutions in the system, then this indicates that the process by which discourse is made practice may be rather complex and in itself dependent upon the particular configurations of power that exist at any one time. Indeed it is possible that particular sites in the system may resist or reconstruct the prevailing conceptual vocabulary to fit their own particular frame of reference; acting thereby as a kind of cultural filter. A more complete theory of system would, therefore, need to examine more carefully how discourse works at both a symbolic level within the system (qua public representation of the aims and objectives of penalty) and at an operational level.

As was mentioned, the literature does indicate that there is a degree of reflexivity or looping in the relationship between discourse and practice, with each playing a role in constructing and reproducing the other. This would suggest that the symbolic and operational levels often work in tandem with, rather than against, each other. A

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<sup>14</sup> This is illustrated well in Feeley and Simon's work by their contention, mentioned above, that actuarial justice (the conceptual frame) provides "a new way of perceiving reality and as such becomes reality itself" (Feeley and Simon 1992). In other words "thinking makes it so".

key question then becomes to what extent and under what conditions this looping leads to normative closure (whereby the system becomes entirely self referential, consistently reconstructing and reinterpreting events according to its own conceptual framework - as systems are conceived within the autopoietic paradigm outlined in chapter 1) and under what conditions breaks in the loops occur (occasioned by external stimuli) which then precipitate transformation in both discourse and practice. This leads on to the third of the weaknesses which relates to the mediation of external processes and the dynamics of change.

### *(iii) The Mediation of External Processes and the Dynamics of Change*

As highlighted above, the ways in which the system responds to external events or processes suggest that its internal dimensions can be rendered cognitively open at certain junctures. What is required within the model of system derived from the literature, however, is a more refined explanation of how such cognitive processes operate. For example greater clarity is required regarding the ways in which external events are able to break into, transform, or themselves become reconstructed by, the dominant modes of communication and networks of meaning within the system. If, as was suggested, there are power struggles within and between particular sites in the system, then this lays open to question the extent to which external processes are able to impact evenly on the system (as implied, in particular, by Garland and Bottoms). It may be that, in practice, external media are absorbed by some elements of the system and resisted by others. Such patterns of absorption and resistance would, of course, be contingent upon the configuration of the discursive hierarchy at any particular time.

### Towards a Reconstructed Model of System

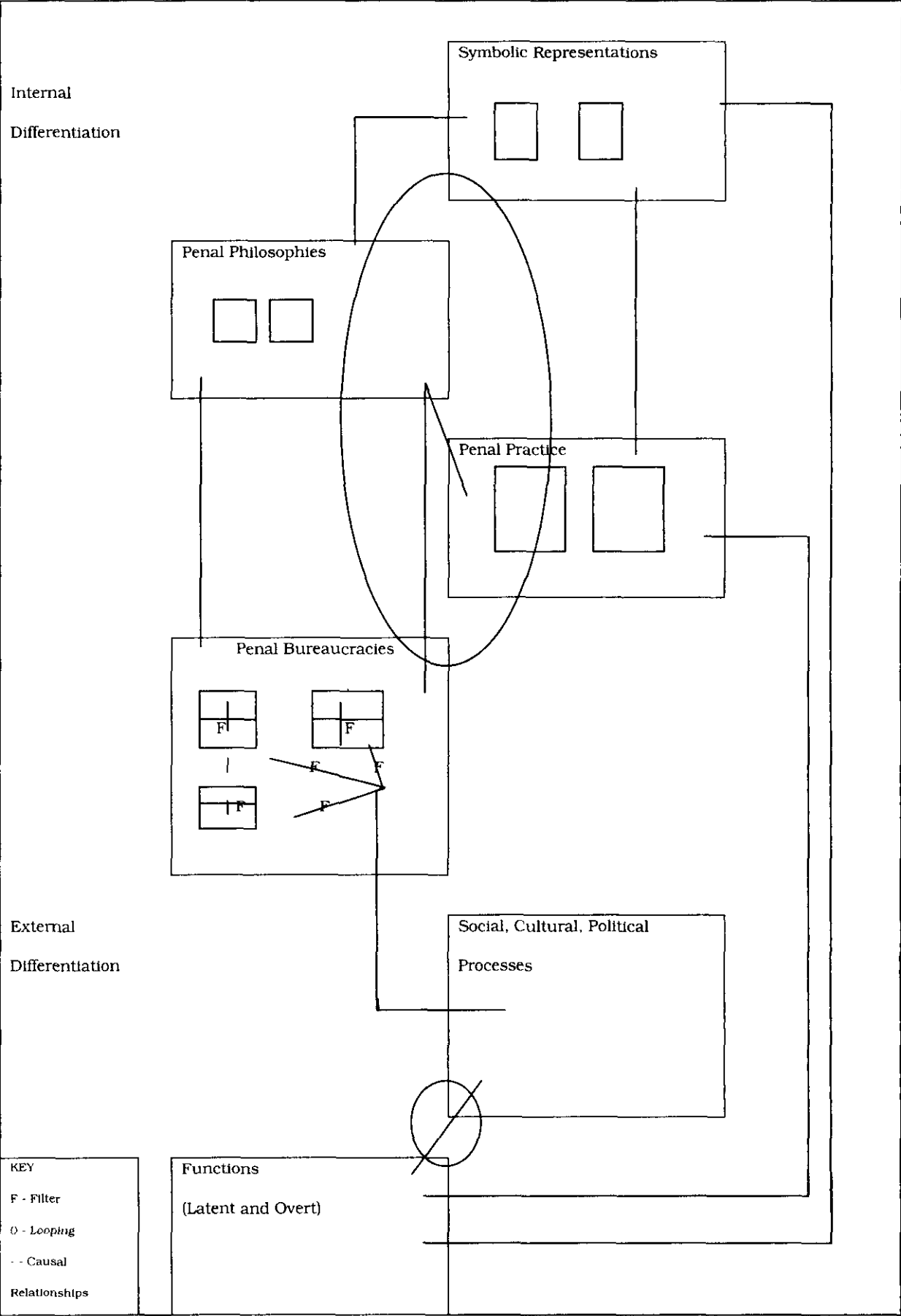
By way of concluding this chapter, I want to draw together the main strands of the argument, thus far, to begin the construction of a more complete model of systematicity in the penal realm.

The critical reading of the accounts of transformation above , indicates that the penal system is multi-relational and multi-dimensional in character. It also suggests that a full understanding of systemic dynamics requires a detailed examination of the power relations that operate over and through the various dimensions of the system and the mechanisms of absorption or resistance through which external processes are mediated.

The critical reading indicates that the discursive sites within the system, function predominantly as a system of communication and that they need to be understood at both a symbolic level (as a means of representing practice) and at an operational level (as reconstructed through practice). It suggests that there may be a hierarchy between these sites which is determined by the particular power configurations that exist at any one time within and between institutions. The institutions themselves are internally differentiated and there may be both internal and external competition for the control of the dominant modes of communication.

*This reworked model of systematicity has been summarised in the following diagram.* (It should be noted that the diagram is intended only to be illustrative of points made, rather than to be a fully developed and highly detailed model of how the penal realm operates qua system).

DIAGRAM 2.1: THE RELATIONAL MODEL OF PENALITY



The lines and circles on the model are intended to indicate the ways in which each aspect of the system has the potential to work on the others (exercise power and/or control); with the lines themselves signifying potential causal relationships and the two circles the potential for autopoietic, looping practices.

The reworked model is in many respects akin to an eco-system whereby there is a high level of interdependency between each element. Importantly, as I have aimed to demonstrate, within particular elements of the system (especially with regard to the institutional settings) there may be struggles for power and control (akin to the struggles for space in ecological theory), with each dimension existing in a state of dynamic equilibrium. At junctures where the looping practices in the bigger of the two circles come into play, the system becomes self-reflexive and hence cognitively closed. By contrast the looping practices in the smaller circle signify mutually constitutive relations between the functioning of the penal realm and broader social and cultural processes: a juncture at which the system is at its most open.

The letters F on the diagram indicate buffer zones or filters within the system, where agents have the potential to resist or reconstruct the particular impulsion to which they are subject. Such resistance may then lead to the breakdown or absence of the linear relationships set out in the model, reinforcing my contention that negative relationality can be as important in determining the character of systemic components as positive relationality. It is the dynamism of all of these relationships which leads to systemic reproduction.

The implication of such a model is that the development of any theory of penalty requires to take seriously the systemic nature of the penal realm. It suggests that, without an understanding of the reciprocal relationships that exist between the



elements which comprise the penal system, any account of the nature and operation of particular elements of that system would be seriously flawed.

### Conclusion

In this chapter I have attempted to demonstrate that the term system is of key importance in understanding the nature and operation of the penal realm. The model of system, that can be derived from a reworking of ideas within the literature on transformation, is necessarily complex. It suggests that, in order to understand the nature of systematicity, a careful analysis is required of both the operation of power in the system and also the dynamics of the reflexive relationships that exist between different elements of system: how these are reconstructed or reproduced. *Contra those commentators, who are antipathetic towards the concept of system* (mentioned at the start of the chapter), the model highlights the *potential* for “irrationality” within the system as exemplified by the fact that competing and contradictory conceptual vocabularies and penal techniques can co-exist. The model also suggests, *contra these commentators*, that it is not shared norms per se that is system defining but rather the dynamics of the modes of communication which sustain them at any one time.

In the next section of the thesis I’m going to explore how systemic functioning as set out in this (still hypothetical) model of the penal system, operates in practice through the three case studies. (i) Case Study A (The Policy Framework) explores external differentiation and the permeability of systemic boundaries, with a particular focus on the dynamics of the relationship between external media and the evolving conceptual vocabulary within the system. In terms of the relational model of penalty, this involves exploration of the linkages between social, cultural and political processes (in the lower part of Diagram 2.1) and symbolic representations (in the top part of the Diagram). (ii) Case Study B: (The Process of Policy Implementation) examines internal differentiation and internal linkage mechanisms,

more particularly the complex dynamics of the ways in which discourse is made practice. This involves an exploration of the linkages set out in Diagram 2.1, between symbolic representations and penal practice. iii) Case Study C (Parole Board Decision-making) explores systemic reproduction as it relates to modes of communication within the system and the dynamics of the reflexive relationships within and between sites which comprise the penal realm. In terms of my model, this involves analysis of the nature and limits of the looping dynamic represented by the larger of the circles in Diagram 2.1, linking penal bureaucracies, penal philosophies, symbolic representations and penal practice. The final chapter of the thesis will consider the ways in which the model requires to be refined, in the light of the empirical evidence, in order to provide a fully grounded theory of systemic functioning.

**CHAPTER 3**  
**THE POLICY FRAMEWORK**  
**CASE STUDY A**

Introduction

Having set out a framework for a relational model of penalty in the previous chapter, I now want to examine the ways in which such a model can be applied to the actual operation and practices of the Scottish penal system itself. As was noted, the intention is to explore different aspects of systemic functioning using empirical evidence, the overall aim being to refine the model and provide a more grounded picture of penal relations.

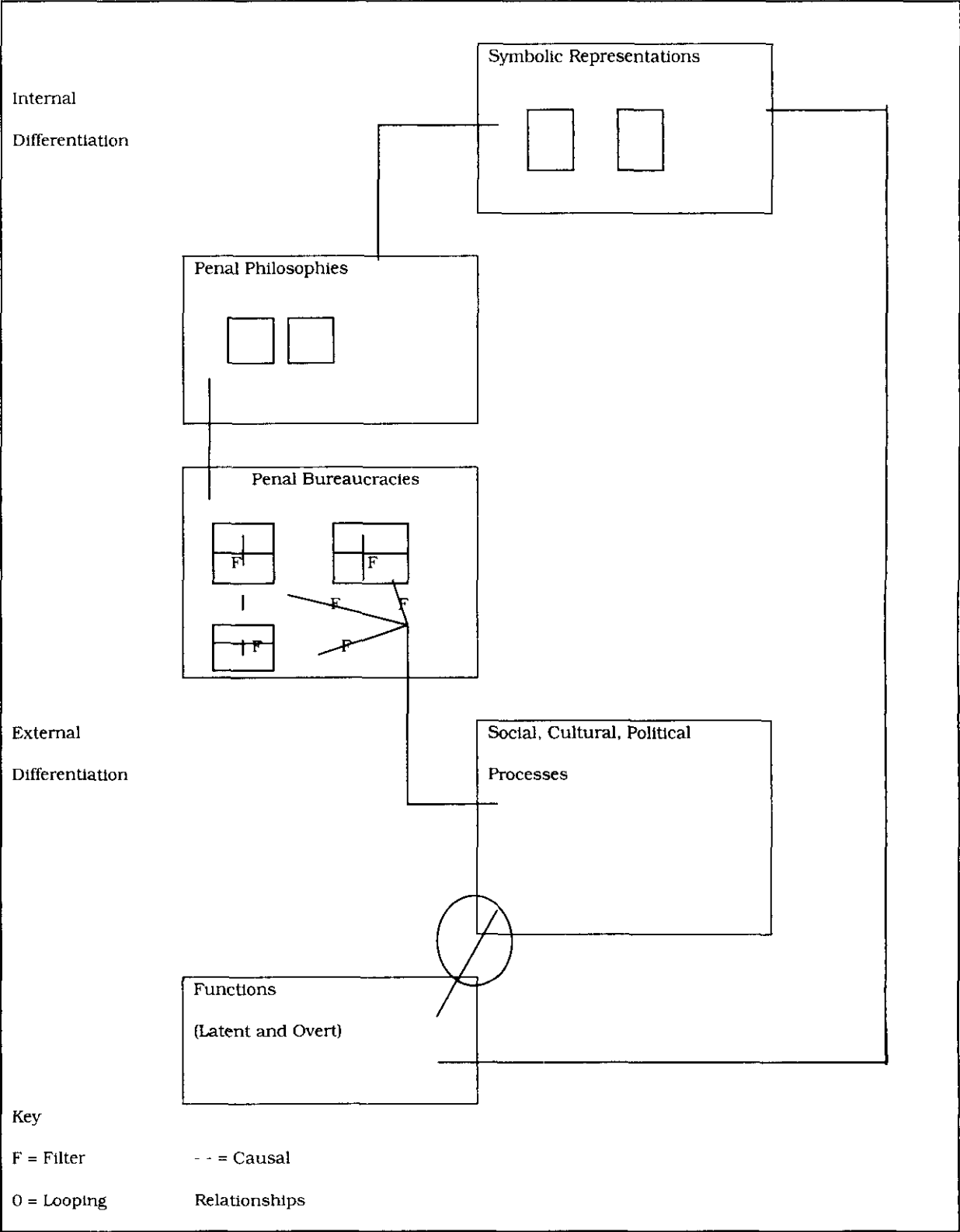
The main example that I use in this thesis is parole. As was mentioned, the reason that parole is particularly useful, is because it constitutes a nodal point in the penal system where a number of key elements intersect, namely social work services, prison services and, of course, the mechanisms and institutions governing parole and early release policy. It therefore provides an advantageous point at which to see how different aspects of the penal system interact.

In this chapter, the first of my three case studies, I am going to examine the development of the policy framework which enables and supports the parole system. The research is based on an analysis of policy documents relating to parole. The chapter includes an exposition of both the conceptual framework underpinning parole<sup>15</sup> and the processes which have impacted on the evolution of the framework itself. In this way I aim to explore in detail the systemic relationships that exist between the conceptual vocabulary of the system (as it operates at a symbolic level through policy discourse) and external social, cultural and political processes, as set out in the following diagram (extracted from Diagram 2.1, chapter 2).

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<sup>15</sup> As given expression, for example, in Government policy documents and the legal boundaries of the system.

**DIAGRAM 3.1: CASE STUDY A SOCIAL, CULTURAL AND POLITICAL PROCESSES AND SYMBOLIC REPRESENTATIONS**



The chapter also provides an opportunity to engage with the more substantive arguments put forward by Feeley and Simon, Garland and Bottoms, for penal

change. As highlighted in chapter 2, a strong link is drawn in this literature between such social, cultural and political processes and changes in penal discourse. One of my arguments in that chapter, was that an adequate model of system requires to examine more carefully than does the literature, the cognitive processes through which external events impact on the dominant networks of meaning in the system. As I aim to demonstrate, this argument is given further weight when the evidence relating to policy development in Scotland is examined in detail. The evidence suggests that the Scottish penal system confounds a number of the trends outlined in the literature (that, contra the literature, penal welfarism has endured in the face of the external processes which have prompted transformation in other jurisdictions), and that examination of the substantive differences between Scotland and other systems, covered in the literature, begins to open to question the explanations offered by commentators, for penal change. The Scottish case highlights the complex and nuanced character of policy discourse and indicates that the relationship between social and cultural processes and penal change is more unpredictable and contingent than the literature on transformation (reviewed in chapter 2) would suggest. It is my contention that a deeper exploration of the dimensions of this unpredictability and contingency, will yield a clearer understanding of the cognitive processes through which external events impact on policy discourse.

As a point of departure I'm going to trace how Scottish penal policy has developed over the past 30 years in each of the sites impacting on parole (i.e. parole and early release policy, social work and prisons policy). In the light of the empirical evidence, I will then offer a critical evaluation of the explanations of penal change put forward in the literature. The chapter will finish with a consideration of the implications of the above for an understanding of the systemic qualities of the penal system.

## The Development of Policy

### *(i) Parole and Early Release Policy*

The first element of penal policy which I want to focus on is that relating to parole and early release from prison. Although penal welfarism has remained a cornerstone of parole policy in Scotland, I am going to suggest that, within this site in the penal system, debates regarding the eligibility of prisoners for early release into the community, have always been bifurcated between a welfarist perspective (focused on the needs of the *individual* offender) and what may be termed a public interest perspective (focused on what are conceived as broader *societal* concerns or the concerns of the *general* public).<sup>16</sup> In contrast to claims in the penological literature that punitive bifurcation is a relatively new and transformative feature of contemporary penalty (see Garland 1996; and Bottoms 1983), within Scotland, a bifurcated discourse has shaped debates and institutional responses to early release from prison, at least as far back as the late 1960s when the parole system was set in motion. Nonetheless, as I aim to demonstrate, the dominant partner of the welfarist/public interest dyad in the early years of parole was generally the welfarist perspective. In recent years, by contrast there has been a *gradual sharpening* of policy discourse around notions of risk and public protection (the public interest element of the dyad).

### *Early Policy Development*

Within early policy documents on parole and early release there was an explicit commitment to rehabilitation. The White Paper *The Adult Offender* (Home Office 1965), which paved the way for the provisions on parole (in both England and Wales as well as Scotland), provides a classic example of penal welfarism. It states that: (i) prisoners are more likely to be made into decent citizens if before completing the

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<sup>16</sup> Of course there is no necessary nor inevitable tension between a public interest and welfare perspective. For example, it could be seen to be in the public interest that prisoners be dealt with in a welfare based system. Indeed one of the distinctive features of Scottish penal culture, more generally, has been a tendency to elide rather than bifurcate welfarism and public protection, Nonetheless within parole policy in Scotland, these perspectives have

whole of their sentence they are released under supervision; (ii) long-term prisoners reach a peak in their training at which they may respond to generous treatment but after which if they are kept in prison they may go downhill (Home Office, 1965).

Nevertheless there is evidence within the document of a twin-track approach to the treatment of prisoners. In the White Paper, primacy is accorded to public protection and, by implication, suitability for parole centres around the level of risk posed by an individual prisoner: low risk being equated with the potential for rehabilitation; high risk with incorrigibility (the "evil-doers" or the "incurably wicked" Home Office 1965). The role of the prison is thereby bifurcated between warehousing the "irreconcilables" in both humane and tolerable conditions and providing treatment and training for the rest. Supervision in the community, for those released on licence, is expected to complete the normalisation process.

The institutional arrangements for parole in Scotland were set out initially in the Criminal Justice Act 1967. This Act laid down the legal framework within which parole was to operate and the relative balance of power between the Parole Board and the Secretary of State for Scotland. Although the Parole Board was constituted primarily as an advisory body to the Secretary of State, nonetheless the Secretary of State could not authorise the release of a prisoner on licence without a positive recommendation for release from the Board.

Crucially there was no mention within the Act of matters which the Secretary of State or the Parole Board should take into account when making decisions on individual cases. The Act, however, enabled the Secretary of State to make rules regarding the procedures of the Board. A high level of discretion was thereby given to the political arm of the parole system to shape the decision-making process.

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been consistently juxtaposed with regard to the type of prisoner who should come within the scope of the parole

### *Policy Review*

The arrangements for parole were reviewed during the 1980s by the Kincaig Committee (which reported in 1989).<sup>17</sup> This review was conducted in the wake of concerns about the opacity and equity of the parole decision-making process (Moore and Wood 1992); increasing tensions and disturbances in prisons attributed, in part, to the perceived illegitimacy of existing parole procedures (Scruton, Sim and Skidmore 1991); and a concern that the parole system had done little to decrease the size of the long-term prison population (Cavadino and Dignan 1997).

The report of the committee (the Kincaig Report) included a reformulation of the objectives of parole stating that the proper aim of parole should be to ensure that the release of all long-term prisoners took place under such conditions that the risk to the public would be minimised and that decisions about the conditions and timing of release should take account, *inter alia*, of any *changes* in the offender or his *circumstances* and increased knowledge of the offender since the passing of the original sentence (Kincaig 1989).

It has been argued that the language in which the Kincaig Report is couched is indicative of a shift away from rehabilitation within parole towards a greater emphasis on what has been termed a "justice" perspective (Moore and Wood 1992) and/or an actuarial perspective. Release on parole is explicitly linked by the authors of the Kincaig Report to control of risk and a risk assessment should be the key focus on decisions made whether to recommend individual offenders for parole. In addition the report states that the objectives of parole should "avoid the rhetoric of treatment and training", indicating a shift away from its earlier rehabilitative concerns. *Nonetheless the language of the report is somewhat ambiguous. There is*

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system.

<sup>17</sup> A parallel review was conducted in England and Wales by the Carlisle Committee whose principal recommendations (Cm 532, 1988) were enabled by the Criminal Justice Act 1991.



still an expectation that the parole decision will focus on whether the person has “changed” in custody and that positive change will be linked to lower levels of risk.

Further evidence for such ambiguities can be found in the legislation which followed the Kincaid committee, namely the Prisoners and Criminal Proceedings (Scotland) Act 1993. In contrast to previous legislation (the Criminal Justice Act 1967 mentioned above), the 1993 Act set out matters on which the Secretary of State is enabled to give directions to the Board namely: risk reduction, public protection *and* rehabilitation. The balance drawn between these 3 matters is partially dependent upon the discretion of the particular Minister involved.

In the time since the passage of this Act, arguably the most significant policy development (leaving aside the Crime and Punishment White Paper 1996, dealt with in detail below) has been the introduction of managerialist techniques into the proceedings of the Parole Board. The first Parole Board Corporate Plan was published in 1996. This plan set out a number of key objectives for the Board one of which was the maintenance of public confidence in the system through *well informed* risk assessment.

“It is of utmost importance that the members assess as fully as possible the risk of a prisoner re-offending while on licence. In order to do this with a degree of confidence, the members require to be furnished with accurate and up to date reports” (The Parole Board for Scotland 1996 pp 7)

It also detailed a range of performance targets most of which related to time-scales within which cases were to be dealt with by the Board and to the development of measures to determine the cost-effectiveness of procedures (The Parole Board for Scotland 1996).

Increased managerialism, however, would not appear to have prompted a significant shift in the overall objectives of the parole system (as Feeley and Simon might suggest). Although risk assessment is highlighted within the range of objectives, the context in which it is mentioned relates primarily to the information requirements of the Board (i.e. the need for the Board to have access to better information on which to base their assessments of risk). In this respect, managerialism appears as a technique to further the efficiency and effectiveness of Parole Board decision-making, rather than as a mechanism for changing the underlying philosophy of the system.

To summarise, while the objectives of parole are being articulated more *explicitly* in the language of risk management than hitherto, this development has not eclipsed the language of rehabilitation with its key emphasis on individual change. I would suggest that this is indicative of a sharpening of focus of the system rather than major transformation, with greater emphasis now being placed, than formerly, on the public interest element of the welfarist/public interest dyad (highlighted above). The introduction of managerialist techniques has assisted this process by providing a set of delimited targets for the Board, aimed at tightening decision-making procedures.

#### *(ii) Social Work and Criminal Justice*

The second element of the parole policy frame I want to examine is that relating to social work services. As was noted in chapter 1, social workers have a key role to play in the parole system, both through the provision of information to the Parole Board (in the form of prison social work and home circumstances reports) and in the supervision of prisoners released on licence into the community.

### *Early Policy Development*

The contemporary role of social work in the Scottish penal system was established by the Social Work (Scotland) Act 1968. Under the arrangements introduced by this Act, the functions of the, then, probation service were transferred to the new local authority social work departments and social workers became responsible for the supervision of offenders in the community and the provision of social enquiry and other reports to the criminal justice system.

The involvement of social work in criminal justice was underpinned by the "Kilbrandon Ethos".<sup>18</sup> This stressed that offending required to be understood in the broader context of the person's social and personal problems and emphasised treatment and rehabilitation: in these respects a classic example of penal welfarism (Young 1997a; Moore and Wood 1992).

The role of social work criminal justice services came under increasing scrutiny during the 1980s, culminating in a formal review of services in the latter part of the decade. Research has identified three factors which contributed to this: concern on the part of Central Government that social work services were ineffective and had lost the confidence of the courts (McAra 1998a); tension between Central Government and local authority social work departments over the funding of services (in particular the funding of community service, see McIvor 1992); and a growing crisis within the prison system in the face of overcrowding, riots and industrial unrest (Wozniak 1994).

At one level (as with parole) these factors mirror aspects of the crises that Bottoms and Feeley and Simon have identified as occurring respectively in England and Wales and the USA: in particular the crisis over penal resources and prison

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<sup>18</sup> Named after the chair of the Committee set up in the 1960s to review the then juvenile justice system and the role of social work in the criminal justice system. The committee reported in 1964. Its principle recommendations were put in place by the Social Work (Scotland ) Act 1968.

management. However an important difference is that within Scotland concerns about the effectiveness of social work services centred, for the most part, around the *method of delivery* of services rather than a loss of faith in their rehabilitative potential.

During the 1970s and early 1980s social workers were generally organised into generic<sup>19</sup> rather than specialist teams. Research indicates that it was the generic nature of service delivery which led to the loss of confidence on the part of the courts (McAra 1998a). Generic social workers were believed to lack the requisite specialist knowledge, training and skills for dealing with offenders and there was a growing perception that social work supervision of offenders had become increasingly lax or, in extreme cases, non-existent (McAra 1998a). A key aspect of the policy review was therefore to explore ways in which methods of service delivery could enhance the effectiveness of social work and thereby allay the concerns of key criminal justice decision-makers.

The outcome of the review was the introduction of 100 percent Central Government funding of certain specified social work criminal justice services<sup>20</sup> (on implementation of the Law Reform Miscellaneous Provisions (Scotland) Act 1990) and the accompanying National Objectives and Standards (implemented from 1991).

### *Managerialism*

In some respects the new funding initiative and National Standards represent a another significant shift towards managerialism as identified by the literature on transformation. In order to qualify for Central Government funding, local authorities are required to develop organisational structures directed towards coherent service

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<sup>19</sup> Generic social work teams have mixed case loads which include a diverse range of client groups such as children and elderly people, in addition to offender based work. This contrasts with the former probation service which only dealt with offenders

<sup>20</sup> Not all social work criminal justice services were included under the scope of the initiative when first implemented. Those included were: throughcare services, social enquiry and other court reports and services,

delivery. They must also develop and review strategic plans for offender services; set out performance targets and institute mechanisms for monitoring and evaluating the achievement of these targets (SWSG 1991). However, far from supplanting penal welfarism as Bottoms or Feeley and Simon might suggest, these managerialist initiatives were intended primarily to *facilitate* the development of effective work with offenders. Evidence for this can be found within the National Standards document itself which includes a supplement setting out a model of social work practice with offenders (intended as a guide for local authority social work departments). This model is derived from a number of "meta-analytic" studies, carefully referenced within the supplement, which claim to have identified the characteristics of programmes which are most effective in reducing re-offending risk (see Maguire 1995; and McIvor 1990; for a review of these studies). The meta-analytic literature suggests that programme effectiveness is predicated on the implementation of managerialist techniques<sup>21</sup> and this is reflected within the National Standards in the importance accorded to the development of procedures for monitoring and evaluation and to the introduction of strategic planning arrangements.

### *Risk Management*

Another significant feature of the model of social work practice in the standards, is the focus on risk management. The model of practice asserts that the most successful programmes are those which are appropriately matched to, or targeted on, the level of risk posed (greater intensity of intervention being warranted only in cases where risk of re-offending is high). According to this model, social work supervision of, *inter alia*, released prisoners should be aimed at providing the correct balance of control and help (the balance dependent on relative degree of risk), with interventions focused on: the causes and consequences of offending; tackling

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*probation supervision, and community service (which had been the subject of 100 percent funding and National Standards since 1989).*

<sup>21</sup> This is known within the meta-analytic literature as "programme integrity", which requires *inter alia*: adequate resources; well trained, highly skilled and motivated staff; and the introduction of mechanisms for monitoring and evaluating performance (see Maguire 1995).

offenders' underlying problems; and assisting reintegration into the community (SWSG, 1991). In contrast to policy developments in other jurisdictions<sup>22</sup>, there is an explicit statement within the National Standards that punitive approaches are ineffective, particularly in respect of young adult offenders (SWSG, 1991).

The emphasis on risk could be taken as evidence of a shift towards a more actuarial penal culture (as suggested by Feeley and Simon in particular). However in contrast to the literature on transformation, risk management has not supplanted rehabilitation as a penal aim, but rather has served to sharpened the focus of intervention aimed primarily at normalisation and behavioural change. Indeed more generally, the standards are premised on the view that higher risk offenders should be placed back into the community *precisely because* reform and rehabilitation are more likely to be effected within a community-based setting (McAra 1998a).

To summarise, the 100 percent funding initiative and National Standards have for the first time introduced an *explicit* agenda for social work practice. This agenda has served to sharpen the focus of practice around the criminogenic needs of the offenders and has been accompanied by a tightening of control over the management and planning of services. Importantly all of these developments are suggestive of a *continuity* in penal aims rather than a wholesale transformation. At the heart of penal welfarism is the presumption that offenders can be rehabilitated or changed into law-abiding citizens. The over-riding emphasis of the new policy is on the provision of services geared to achieving this outcome. The managerialist and actuarialist elements of the policy have been constructed as techniques to better effect normalisation. In these respects social work criminal justice policy has constructed a synthetic discourse in which risk management has been conceptualised as a necessary element of the rehabilitative process.

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<sup>22</sup> For example penal policy in England and Wales became increasingly punitive during the 1990s, in particular with the Home Secretary's famous dictum in 1993, that "prison works" (for further discussion of this see Cavadino and Dignan 1997)

### *(iii) Prisons Policy*

The final element of the policy framework which I want to address is prison's policy.

From around the 1950s until the 1970s prison's policy in Scotland was conceived on rehabilitative and therapeutic lines (Young 1997a). Prison Rules stated explicitly that the purpose of the prison was to enable prisoners to lead "good and useful lives" and strands of this approach were evident even as late as the 1980s. (For example, the mission statement issued in 1988 stated that a key aim of imprisonment was to assist prisoners to lead law-abiding and useful lives in custody and after release, see SPS 1988.) The standard account of developments is that since this period there has been a marked shift in prison policy towards increased managerialism and away from an explicit commitment to rehabilitation (Young 1997a; Wozniak 1994) .

Most commentators agree that the key factor precipitating this shift was the crisis in prisons which occurred in the 1980s (Wozniak 1994). As was mentioned, overcrowding made prisons extremely difficult to manage, leading to an outbreak of disturbances and riots, including hostage taking. Industrial relations disputes and concerns about increased costs contributed to the sense of crisis, as did concerns about the fundamental purposes of imprisonment which had arisen in the wake of criticisms of the efficacy of rehabilitation and correctionalism. Prison policy was therefore reviewed in the context of both a philosophical crisis about the purpose of imprisonment and a crisis of penal resources.

The outcome of this review was the implementation of new managerialist initiatives and a recasting of the objectives of imprisonment. Managerialist initiatives have included the Business Plan (1989) which set out a number of management tasks, explained the new corporate philosophy of the service and identified priority areas for development. The Scottish Prison Service now produces corporate plans on a

regular basis, reviewing progress and setting out key targets to be achieved within the planning cycle.

Shifts in the philosophical underpinnings of prison policy are most evident in the document *Opportunity and Responsibility* (1990). This document states that prisoners should not be regarded as individuals in need of treatment or reform but as individuals who are responsible for their own actions. The role of the prison therefore should be to provide a range of opportunities for the prisoner which will encourage them to accept this responsibility. The facilitation of change - which the prisoner has to instigate themselves - now replaces any explicit commitment to providing treatment.

On one level the changes I've just described reflect trends identified by Feeley and Simon, Garland and Bottoms, in particular: the twin crises over prison overcrowding and the purposes of imprisonment; the instigation of managerialist techniques; and the recasting of rehabilitation in the mould of responsabilisation. However the extent to which these developments have led to a complete eclipse of penal welfarism and/or rehabilitation is more questionable.

There is still a commitment within *Opportunity and Responsibility* to the provision of prisoner programmes aimed at tackling offending behaviour and other significant problems such as drug or alcohol abuse. One example of this has been the widespread introduction of cognitive behavioural programmes (in particular those based on the "Reasoning and Rehabilitation" programmes developed in Canada, see Ross, Fabiano and Ewles 1988). These programmes are aimed at enhancing the reasoning skills of prisoners and eliminating (cognitive) distortions in their thinking



processes.<sup>23</sup> The programmes are intended to facilitate behavioural change but are premised on the notion that offender has to take responsibility for instigating this.

A further example is in the continued commitment to the flagship "STOP" programme at Peterhead. This programme is aimed at assisting sex offenders to accept responsibility for their offending behaviour, address the consequences of their offending for themselves and for the victims of their offences, and to develop strategies that will assist in the exercise of self control and avoidance of situations likely to lead to re-offending (Spencer 1998).

An important aim of Opportunity and Responsibility is also to minimise the harmful effects of the prisoners removal from normal life as a means of assisting eventual reintegration into the community. The intention is to improve family contacts through increased opportunities for home leaves and greater access to pay-phones; to develop better developed pre-release programmes; and to improve conditions within prisons, such as giving every prisoner access to night sanitation or integral cell sanitation (SPS 1990).

Although prison policy aims to provide choice and emphasises individual responsibility, it is doing so within the context of prison regimes aimed at assisting prisoners to change their behaviour and lifestyles, and to reintegrate into mainstream society (as the above examples ably demonstrate). Indeed it is arguable that there are now even greater numbers of rehabilitative programmes being implemented within prisons, than during the supposed high point of penal welfarism between the 1950s and 1970s.

To conclude this section, recent developments in prisons policy reflect many of the trends in social work. Prisons have been given a more explicit and sharply focused

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<sup>23</sup> Key objectives of these programmes include enabling prisoners: to identify their problems; think out alternative

agenda to work within, based primarily on normalisation and the facilitation of change, and SPS itself has developed a more coherent approach to the management and planning of services. In many respects these developments do mark a watershed in prison policy. Nevertheless the commitment to prisoner programmes based on effective interventions suggest that core aspects of rehabilitation are alive and well within the prison system.

*(iv) The Crime and Punishment (Scotland) Act 1997*

Before I conclude this section on policy development, mention must be made of the White Paper Crime and Punishment (HMSO 1996) and the subsequent Crime and Punishment (Scotland) Act 1997. During the brief tenure of Michael Forsyth as Secretary of State for Scotland (in the last two years of Conservative Government), official pronouncements on penal policy became increasingly punitive, culminating in the publication of the White Paper and the passage of the 1997 Act.

The White Paper included proposals for the abolition of the parole system (to be replaced by a system of remission); for certain community-based disposals to be made tougher and more rigorous and for the imposition of mandatory life sentences for a second serious, sexual or violent offence (the so-called "two-strikes" policy). These proposals were justified in the White Paper on the grounds that they would enhance the confidence and trust of the public in the criminal justice system and also that the new arrangements would protect the public. If Scotland has ever had a moment of punitive populism then this was it.

Nevertheless the White Paper proposals both on early release and in respect of prisons still retained a residual commitment to rehabilitative concerns. As a means of ensuring public protection, early release from custody was to be partly contingent on offenders making efforts to address offending behaviour during time spent in

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courses of action; and plan steps towards solutions for those problems (see McGuire 1995).

custody (thereby demonstrating efforts to effect behavioural change). Prisons were also exhorted to match counselling and educational programmes to the specific needs of their populations. The document also placed concern about crime within a broader crime prevention strategy aimed at supporting families, creating greater employment and training opportunities and better pre-school education. The links to a broader programme for social change indicate that the document *Crime and Punishment* has the *potential* to be used to promote penal welfare strategies even although the spin placed on the document by the then Conservative Minister of State would have resulted in the partial eclipse of such strategies within the Scottish context.

At the time of writing, the new Labour administration has pledged not to implement many elements of the *Crime and Punishment (Scotland) Act*, in particular those relating to parole and a number of those relating to sentencing (for example the two-strikes policy). It remains to be seen whether the more punitive edge given to penal policy by the late conservative administration filters through in any meaningful way to future labour policy or whether the distinctive penal culture in Scotland will endure (see below).

#### *(v) Policy Developments and Accounts of Transformation*

I have now completed the review of policy developments in Scotland. By way of concluding this section I want to reassess these developments in the light of the main themes in the literature on transformation (as exemplified by Feeley and Simon, Garland and Bottoms and reviewed in detail in chapter 2). As will be recalled from the previous chapter, the key changes noted by this literature are: the shift to risk management and actuarial justice (Feeley and Simon); the trend towards punitive and preventative penal strategies (Garland); and the increased focus on responsibilisation, just deserts and proportionality in punishment (Bottoms).

Taking Feeley and Simon's work first - while it is clear that risk management and aspects of actuarial justice have penetrated the Scottish penal system (in particular with respect to social work and parole and early release policy) these have not become system defining in the manner in which Feeley and Simon would suggest. Within social work risk management has been conceptualised as a necessary aspect of effective work with offenders; within parole policy it is one element of a system which has since its inception been underpinned by a bifurcated rationale (comprising both welfarist and public interest perspectives).

With regard to key themes in Garland's work, there is little evidence that policy in Scotland has become increasingly bifurcated between punitive and preventative strategies, nor between the criminology of "the self" and of "the other". As was mentioned, parole policy has always been bifurcated between a welfarist and public interest perspective: that is between rehabilitation and protection rather than punishment and prevention. Indeed there is an explicit rejection of punitive approaches in social work policy and the dominant "criminology" within the policy sites reviewed is one which links offending to certain specified "criminogenic" needs (for example drug or alcohol problems) and to deeper social and or psychological malaise (as for example in the Kilbrandon ethos).

In respect of the themes in Bottoms' work - while there is some evidence to suggest that rehabilitation has been recast into responsabilisation strategies (particularly in prisons policy), none of the policy sites reviewed suggest that the penal system has become increasingly focused on just deserts nor on proportionality in punishment. While concerns about the equity of parole decision-making procedures played a key role in prompting the review of policy, the outcome of the review was to assert that *the focus of parole should be risk reduction, public protection and rehabilitation* with little attention, in practice, being paid to the equity or indeed proportionality of decision-making outcomes.

Finally there is little evidence for the claims made in all of the literature, that penal welfarism has been eclipsed. Within all of the policy sites reviewed, core aspects of rehabilitation remain. This is most notable with regard to the commitment to the provision of programmes which can effect behavioural change and which are aimed at assisting the offender to reintegrate into the community. The main changes that have occurred in Scotland are: firstly a sharpening of focus of penal aims away from broad and often ill-defined notions into a clearly stated and *delimited* set of objectives; and secondly what may be termed a re-professionalisation of penal practice through the adoption of managerialist techniques. Underpinning these changes has been a continued commitment to the values of penal welfarism.

#### Explanations for Policy Development

Having examined the development of parole policy, I now want to explore in more detail the systemic relationships between the conceptual framework of the system and external processes. As was mentioned, I am going to do this by way of a critique of the explanations for penal change developed in the literature on transformation. I aim to demonstrate, in this section of the chapter, that there is no necessary causal connection between the social and cultural processes highlighted in the literature and the actual *form* which penal policy has taken. In this respect penal development is more unpredictable and nuanced than the literature would suggest. In order to explore these issues and their implications I will firstly assess Garland arguments on the relationship between legitimisation crisis and penal change and secondly Feeley and Simon and Bottoms' arguments regarding the relationship between shifts in social structures and penal forms.

##### *(i) Legitimation Crisis and Penal Change*

Garland argues that penal transformation has occurred as a response to a crisis of governance precipitated by the persistence of high crime rates. The Scottish case presents a conundrum for this argument, as Scotland has experienced both high

crime rates and a legitimization crisis but neither of these factors has led to an eclipse of penal welfarism nor indeed to any major penal crisis.

### *High Crime Rates*

High crime rates have become as much a feature of contemporary Scottish society as other western societies. Between 1950 and 1995, for example, there was almost a five-fold increase in recorded crimes and offences in Scotland (from around 40 to 186 per 1000 of the population: Young, 1997a). It is only in recent years that the rate of increase has begun to slow down (see Smith and Young 1999, for further discussion)<sup>24</sup>. It would be wrong to suggest that concerns about high crime rates have not filtered into the policy making process to some degree. (Within juvenile justice for example, high offending rates amongst children and young people was one of the precipitating factors for policy change in the 1990s.) However, any shifts in policy attributable to high crime rates, have done little to alter the underlying rationale of the system, as the example of parole policy ably demonstrates. As was said, policy development in Scotland has generally been accomplished by *sharpening the focus* of existing frameworks rather than by a wholesale change of direction. Moreover the link drawn by Garland between high crime rates and legitimization crisis is fairly tenuous when recent Scottish developments are considered in more detail.

### *Legitimation Crisis*

During the 1980s and early 1990s Central Government in Scotland did indeed appear to have a weak claim to legitimacy (see Brown et al. 1996). The sources of this weakness, however, are less linked to high crime rates and more to the growing disjuncture between grassroots politics in Scotland and the right wing policies of the Thatcher/Major governments. According to Brown et al. the ideologies associated

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<sup>24</sup> This compares with an eight fold increase in notifiable offences in England and Wales from 1950 to 1996, from 11 to 95 per 1000 population (Maguire 1997). Indeed, Scotland, in common with most western criminal justice systems, has seen a long-term increase in crime rates since the 1930's (Young 1997). It is only in recent years that crime rates have begun to diverge slightly from those in England and Wales; most notably during the 1980s and early 1990s when the rate of increase in Scotland was slower than that in England and Wales. This is also

with Thatcherism and Majorism cut across the basic consensus that had existed amongst political parties in Scotland, in respect of both economic and social policy (Brown et al. 1996). This is reflected in the fact that skilled working class voters in Scotland did not shift allegiance from traditional (predominantly) labour party politics to new conservatism (as happened in England) and voting patterns during the 1980s and 1990s indicate strong continuity of support for both Labour and increasingly (in the early 1990s) the Scottish National Party (see Brown et al. 1996). In these respects problems of governance in Scotland became increasingly articulated as a *constitutional* rather than penal crisis, with a growing clamour for home rule and increasing resistance to unpopular policies of which the Poll Tax is the most spectacular example (see McCrone 1996 and Midwinter 1995, for further discussion of this).

Paradoxically it may be that (contra Garland) this legitimisation crisis has served to buttress the penal system against major transformation. To understand why this may be the case requires an explanation of the role of policy networks within the Scottish penal system.

### *Policy Networks*

Both Young (1997b) and Moore and Booth (1989) have highlighted the significance of policy networks for an understanding of the development of policy within a Scottish context. These networks comprise senior civil servants within the Scottish office and key decision-making elites out-with Central Government, such as Directors of Social Work, members of the judiciary, Crown Office and the police. Policy networks have grown up and have been sustained by what Young has termed a metaphoric and geographical "barrier" provided by the constitutional settlement of 1707 (which guaranteed the existence of separate Scottish educational and legal systems and a separate Scottish church) and by administrative arrangements whereby large areas

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reflected in crime survey data which suggests that rates of victimisation are now lower in Scotland than in England

of domestic policy making have been turned over to the Scottish Office. This barrier has enabled these networks to argue for *separate* policies tailored to the distinctive conditions existing in Scotland or to claim that the differences in the Scottish system mean that a special case should be made for *adapting* UK policies in order to ensure effective implementation (Young 1997b; Moore and Booth 1996). The enduring strength and influence of these networks in the penal realm has been one of the main reasons as to why the Scottish penal system has been able to sustain a commitment to penal welfare values in the face of a UK national government which was espousing a more punitive approach to penal policy.

The strength and influence of the networks is best exemplified by social work policy in the 1980s and 1990s. The development of the 100 percent funding initiative and National Objectives and Standards (discussed above) was conducted by SWSG in consultation with key players in the penal system such as members of the Parole Board for Scotland, the judiciary, the police and local authority social work departments. The aim of this consultation was to facilitate "common ownership" of the policy (McAra 1998a) and the policy was hammered out amongst these groups behind closed doors. This contrasts with the development of policy relating to community-based disposals in England and Wales at this time. Here "consultation" took place mainly through a rash of green papers issued by Central Government (see Mair 1997) and the increasingly punitive approach taken to these sanctions by Central Government (reflected within the Green Papers) served to fragment rather than unite key groups in the system (for discussion of the impact on the probation service see May and Vass 1996).

At times when the political arm of Central Government has a weak claim to legitimacy (as occurred in Scotland during the Thatcher and Major years), the influence of policy networks can arguably increase. Lacking in popular support,

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and Wales (Young 1997).



government may be *crucially* dependent on the support of key decision-makers at all levels within the system, for effective policy implementation and this can give the voice of policy elites a greater resonance. Nonetheless the balance of power is a delicate matter and, in many respects, is dependent on the political will of the particular Minister involved. During the 1980s and early 1990s Ministers (such as Malcolm Rifkind, the former Secretary of State, and Lord Fraser of Carmylie the former Minister at the Home Department) were sympathetic to the distinctiveness of the Scottish penal system and were more consensual in their approach to policy development. By contrast the accession of Michael Forsyth as Secretary of State in the mid 1990s, heralded a more confrontational style of politics and less willingness to negotiate and bargain with key groups in the system. Even still, the main outputs from his era (the Crime and Punishment White Paper and subsequent Act, discussed above) retained the imprimatur of a distinctively Scottish commitment to effective practice and to broader social crime prevention strategies, suggestive (although not complete proof) of a continued degree of influence of the policy networks described above.

The implications of this are that the very processes which Garland associates with transformation, may have contributed to continuities within the Scottish system. At the very least, the Scottish case serves to highlight the contingency inherent within policy development: in particular with regard to the relationship between political exigencies and the relative strengths of elite groups in the penal system at any one time. What this suggests is that: firstly there is no causal relationship between legitimisation crisis, high crime rates and penal transformation; and secondly that the impact of social and political processes on penal development will be partly determined by the way in which these processes are responded to or interpreted by the political arm of Central Government and/or policy elites (both within and out-with Central Government).

*(ii) The Relationship between Social Structures and Penal Forms*

Finally I want to turn to an assessment of the explanations offered by Feeley and Simon and Bottoms for changes in the nature and function of penal forms. Each of these accounts links penal transformation to broader shifts within contemporary social structures. For Feeley and Simon the key change has been the emergence of an underclass of permanently marginalised and thereby potentially threatening groups. For Bottoms key changes include a number of the features of late capitalist societies, in particular the disembedding of social relations, shifts in patterns of work and technological developments.

Again the Scottish case poses a conundrum for these arguments. Most of the changes in social structures identified by the literature, are evident within Scotland and yet none would appear to have precipitated an eclipse in penal welfarism. Indeed technological developments (mentioned by Bottoms) have assisted the development of managerialist techniques aimed at improving the effectiveness of penal practice in achieving essentially welfarist objectives. In these respects the Scottish case can be used to show that there is no causal connection between these social processes and the form which penal policy has taken.

*Underclass and the Disembedding of Social Relations*

Scotland, in common with a number of western societies, has undergone major structural changes over the past 30 years. There has been a massive decline in traditional industries, such as mining and steel making, and a corresponding growth in service industries and part-time, less secure and casual labour (Norris 1983). This has been accompanied by increased social polarisation, with top income earners becoming even richer and those at the lower of the spectrum becoming poorer.<sup>25</sup> Indeed research suggests that the number of people living in poverty has

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<sup>25</sup> Figures from research undertaken by Davis et al (quoted in Oppenheim 1993) indicate that between 1979 and 1992 the richest income earners saw major increases in income (for the top 10% of income earners these increases

risen dramatically in recent years, with one fifth of the Scottish population inhabiting the most deprived post code sectors. Many of those living in poverty are lone parent families and this reflects the growth in divorce and separations rates over the past twenty years (Tennant 1995).

All of these features suggest that there are growing numbers of marginalised, socially deprived groups within Scotland and that there may have been a gradual disembedding of social relationships away from intermediate groups such as the traditional nuclear family. They also indicate major changes in the pattern of work for large numbers of people, away from the discipline of the factory and the security of long term and skilled employment, to a more shifting, insecure and de-skilled form of labour.

Given the similarities between these developments and those identified by Feeley and Simon and Bottoms, why then have such developments not been associated with penal transformations in Scotland? A full explanation is dependent on exploring in greater detail than does the literature on transformation reviewed, the *processes* by which social changes impact on, and are mediated by, the penal system. I would suggest that a major part of the answer lies in the particular nature of Scottish civic culture<sup>26</sup> and the way in which this operates as a kind of buffer zone, inhibiting change.

In Scotland, there is a relatively small (although growing) body of work on civic culture. Much of this work is to be found within the broader historical literature on the development of Scottish civil society and institutions of governance since the union with England in 1707, or in political works on the nationalist movement in

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amounted to £87 per week), whereas the lowest income earners saw their share of income decrease (for the poorest groups this amounted to a loss of £1 per week).

<sup>26</sup> *The distinctiveness of Scottish culture and the need to examine Scotland separately from England and Wales is remarked on by E.P. Thompson in his introduction to the Making of the English Working Class (1963).*

Scotland and the growing clamour for independence in the mid to late twentieth century (see for example Kellas 1968; Smout 1986, Nairn 1981, 2000).

Most commentators on civic culture would concur that there has been a more democratic tradition within dominant institutions in Scotland (than for example in England and Wales), particularly with regard to education and the church (see Bryce and Humes 1999, Humes and Paterson 1983, Beveridge and Turnbull 1997). In education this tradition has been exemplified by the principle of "democratic intellectualism" which is said to inform policy and practice, a principle which valorises openness and accessibility of education for all sectors of the community as well as openness and generalism in subject matter (see Midwinter et al 1991). Within the Church of Scotland it has been exemplified by the democratic control exercised by individual congregations over the central institutions of the Church (as for example in the General Assembly) (see Dickson 1989, Kellas 1968).

Indeed has been argued that both the education system and the church, together with the legal system, have served as the primary "carriers" of Scottish identity since the Union in 1707 (see Nairn 1981, Harvie 1977 Midwinter et al 1991). While the Union led to the demise of the Scottish State, the institutions of civil society remained intact and thus provided a locus within which the vestiges of Scottish nationhood could flourish (Nairn 1981, McCrone 1989).

The democratic traditions within the church and education have been accompanied by a strong socialist tradition, especially at local government level, which has gained momentum throughout most of this century. This tradition was given impetus by what MacArthur has termed "Clydeside-ism", whereby the industrial militancy of Clydeside workers during the First World War became elevated to iconic status, providing a "heroic and radical reference point" for the Scottish nation in general

and the Scottish Labour movement in particular (see Midwinter et al 1991, McArthur 1981, Harvie 1981).

Taken together these factors could be said to have contributed to the construction of a civic culture which valorises community, public provision of welfare and mutual support, and which intermittently becomes linked to a broader sense of Scottish identity (as occurred increasingly throughout the Thatcher/Major years) (see Paterson 1994, for further discussion of such issues). While some commentators have suggested that aspects of this culture are based less on the actual day to day practices of civic institutions and more on a series of myths, as exemplified by "Clydeside-ism" (see in particular Nairn and McCrone), it is nonetheless acknowledged that the culture has been widely absorbed within Scotland and has in recent years become a powerful touchstone of "Scottishness".

Little (if any) of the literature on Scottish civic culture considers the linkages which this culture may have with penal culture. This is unsurprising given the tendency within the literature to make a rigid demarcation between the State and civil society in Scotland with regard to cultural matters. (For many of these commentators the State in Scotland represents Britishness and is therefore of little significance when developing an understanding of Scottishness, see for example Nairn 1981.) I would suggest, however, that a more complex, indeed symbiotic relationship has evolved between aspects of the State in Scotland (as exemplified by the penal system) and civil society (as exemplified by civic culture), than that acknowledged by much of the literature. Indeed it is arguable that civic culture shores up and to some extent is reproduced by a penal culture whose predominant rationale is rehabilitative and reintegrative. This civic culture has continued to operate on an *ideological* level in the face of the increased social polarisation, marginalisation and disembedding of social relations described above (hence the growing sense of "myth" amongst academics who have reflected on these issues). It is in this way I would suggest that

civic culture has acted as a buffer zone inhibiting penal change. The relationship between penal and civic culture, however, is likely to be a highly contingent one. Penal change may be averted only until such time as the contradictions between civic culture and social structure become too sharp for the culture itself to be sustained.

To conclude this section, within Scotland, penal welfarism endures as the dominant framework within which debates on justice and policy have taken place. Policy developments themselves have been characterised by a gradual sharpening of focus around notions of effectiveness and strategies for balancing care and control, rather than a wholesale change in direction. The sharpening of focus has resulted in greater clarity of purpose and a more explicit agenda for the various interventions reviewed. Even in the Forsyth years, when there was a greater commitment to the values of populist punitiveness, the flagship legislation was underpinned by a commitment to broader social crime prevention strategies and the provision of programmes to effect behavioural change.

In these respects the Scottish case poses a conundrum for the literature on penal transformation. It does so because penal welfarism has endured in the face of social and cultural features which according to the literature should have prompted a significant shift in the nature and function of penalty. I have suggested that this is attributable in part to the enduring strength and influence of elite policy networks within Scotland and may be linked to a civic culture which continues to valorise community integration and mutual support in the face of increased polarisation and marginalisation.

### Implications

In this final section of the chapter, I want to consider the implications of the above critique for an understanding of systematicity in the penal realm.

Returning to the elements of the relational model of penalty set out in Diagram 3.1, it is now possible to refine a little further the linking mechanisms between the discursive framework of the system as it operates at the level of symbolic level representation, and social, political and cultural processes.

The Scottish evidence indicates that external forces can play a dual role in the penal system. Firstly they impact on power configurations within the system between the networks of decision-making elites (working both inside and outside Central Government) and the Ministers at the helm of the system. External processes (such as those contributing to crises of legitimation, see Garland 1996) can serve to weaken the political power of Government and thereby increase the relative power of the elites to shape policy discourse: the corollary of this being that where external processes lead to the strengthening of the political arm of Central Government, the influence of policy networks may be decreased. In this way, it could be argued, the internal institutional elements of the system exist in a situation of dynamic equilibrium, with externally derived forces strengthening or weakening the hand of particular agents or agencies to dominate and frame the symbolic language of the system.

Secondly the symbolic discourse of the system can be shaped by the manner in which elite groups and/ or political agents *interpret* the imperatives of external social processes. As was mentioned factors leading to penal crisis in other jurisdictions have been construed as indicators of constitutional crisis in Scotland. Understood in this way, the processes precipitated transformation in the structure of Government rather than penal practice. This indicates that external processes in themselves do not impel change, rather it is what they are taken to signify. In turn this highlights the significance of what may be termed cultural filters within the

system: whereby policy networks have the potential to reconstruct the particular impulses to which they are subject.

Furthermore the Scottish evidence suggests that there may be a substantive lag between shifts in social structure and shifts in the symbolic discourse within the penal system, especially where the discourse itself is shored up by the culture and traditions of intermediate civic institutions. Although Bottoms suggests that such institutions are declining in influence, within Scotland it would appear that they can, at a cultural level, act as a buffer and create resistance towards the processes which have the potential to transform penal discourse. The mutuality between civic culture and penal discourse is suggestive of a degree of reflexivity or looping: as was stated above, each plays a role in shoring up the other. The dynamics of looping therefore can act as a brake on change.

Taken together the findings indicate that boundary mechanisms in the penal system (as sustained by the symbolic discourse of the policy frame<sup>27</sup>) are *relatively permeable*. The system appears *cognitively open* (and hence permeated by external influences) to the extent that there is an interdependency between civic and penal culture. Paradoxically, however, by closing off the system from a range of other potentially transformative impulses, this very interdependence can also lead to a degree of normative closure. The relative permeability of boundary mechanisms is also evident from the manner in which external stimuli appear to impact on intra-systemic power relations. To the extent that such stimuli are able to influence the balance of power amongst elite groups, the system appears relatively open. In contrast to this, however, the manner in which internal elites are able to reconstruct and reinterpret external processes is suggestive of a degree of normative closure (see chapter 1).



The paradox and contradiction which characterise the nature and functioning of boundary mechanisms, have important implications for the model of system which I am developing. They suggest that systems are, in part, driven (and indeed reproduced) by the interplay between, what may be termed, the dynamics of openness and the dynamics of closure (a feature of systematicity which I will return to in chapter 7). This indicates in turn that the relationship between the penal system and its environment is likely to be a highly complex one. As was noted in chapter 1, systems theory associates normative closure with systemic autonomy and (in certain versions of autopoietic systems theory) extreme independence from environmental factors. By contrast the evidence in this chapter suggests that normative closure can be facilitated and shored up by factors extraneous to the system itself. Under such circumstances, openness may be functioning as a precondition for closure.

### Conclusion

In conclusion, the Scottish case implies that explanations of penal change need to take more seriously the contingencies inherent within policy development and the processes through which social, cultural and political processes are mediated by the penal system itself. This in turn requires a careful analysis of the *systemic relationship* which exists firstly between broader social forces and the level and scope of power enjoyed by key players in the penal system; and secondly between the cultural practices of intermediate civic institutions and the symbolic practices of penal institutions.

This chapter has examined the development of policy discourse at a symbolic level within the system. In the next chapter I will explore the relationship between this symbolic discourse and the operational practices of agents working within the system. The case study will developed around the process of policy implementation.

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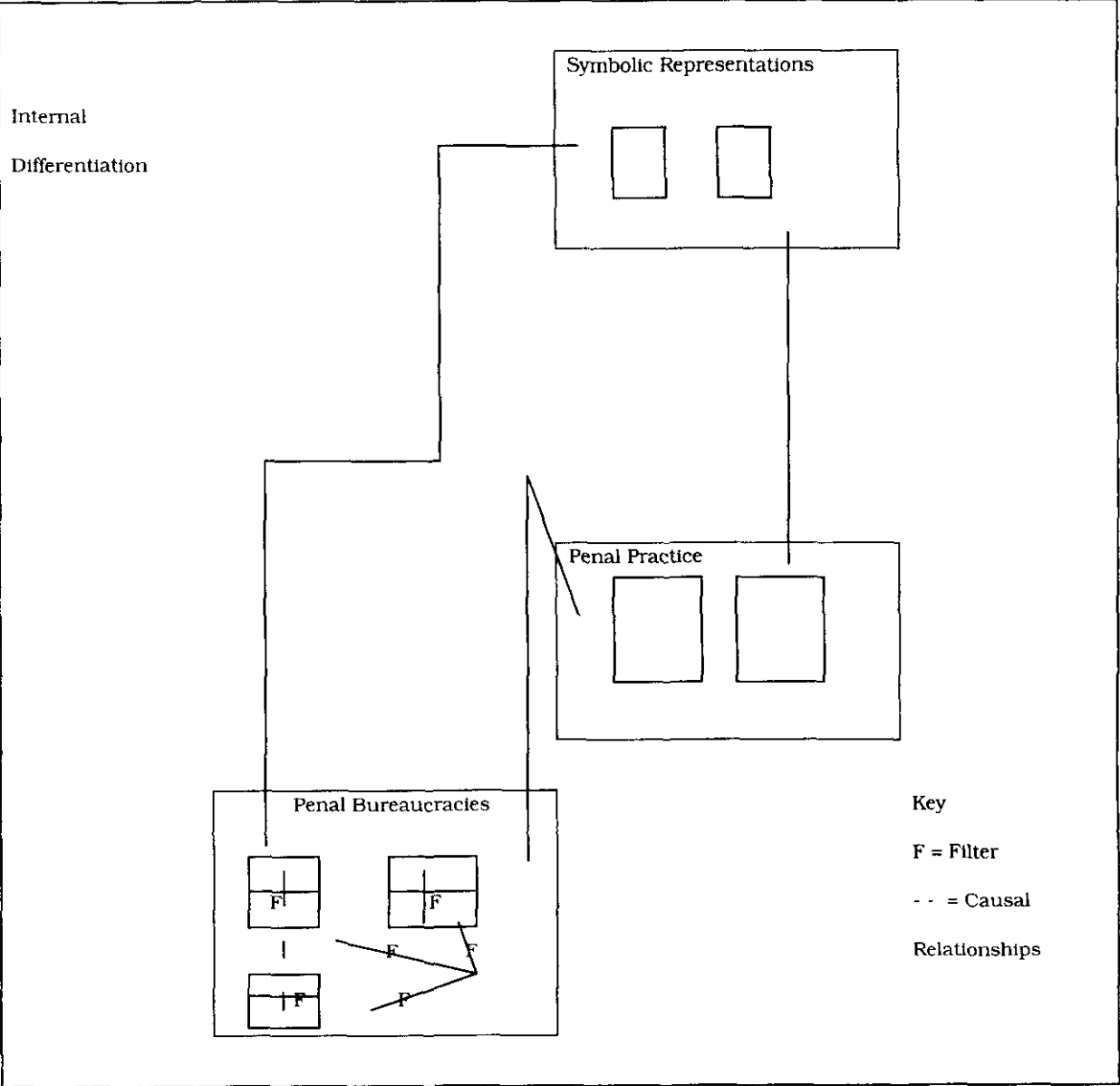
<sup>27</sup> The symbolic discourse of the policy frame plays a similar role in boundary maintenance to that of the legal framework (see chapter 2), in that it also is able to provide a normative locus for the system.

**CHAPTER 4**  
**THE PROCESS OF POLICY IMPLEMENTATION**  
**CASE STUDY B**

Introduction

In the previous chapter I set out the conceptual framework underpinning policy development in each of the sites impacting on the parole system. I now want to begin a more detailed examination of the relationship between this framework and the operational practices of agents working within the system. In terms of the relational model of penalty, this involves an exploration of internal linkage mechanisms within the penal system, specifically linkages between symbolic representations, penal bureaucracies and penal practices, as set out in the following diagram (extracted from Diagram 2.1, chapter 2).

**DIAGRAM 4.1: CASE STUDY B THE RELATIONSHIP BETWEEN REPRESENTATIONS, BUREAUCRACIES AND PRACTICES**



In order to explore these linkages, I am going to focus on the process of policy implementation. None of the literature on transformation reviewed, includes detailed consideration of implementation processes. As highlighted in chapter 2, each commentator assumes that the shifts in penalty identified have permeated and transformed the whole system. As a consequence a causal relationship is inferred (but not fully explored) between discourse and practice, with changes in the former leading to a reshaping of the latter. This I would submit, is a major weakness in their accounts and stems primarily from a deficiency in method: that of generalising

from one aspect of the penal system to the system as a whole. This leaves unexplored a series of relationships between different dimensions of the penal system, which serve to reconstruct and rework discourse as it is rendered into operational practice. "Reading" the system at the level of discourse, therefore, can only provide a surface understanding of a richer and more complex relational organism.

It is my contention, that a deeper understanding of implementation processes can shed light on both the functioning of the penal realm qua system and also on the process of transformation itself. As I aim to demonstrate, an exploration of policy implementation highlights the power struggles which can occur within and between different sites in the system and also the ways in which the perceptions of agents in different settings (in particular their interpretation and understanding of policy imperatives) are shaped by their specific occupational roles. I will suggest that both of these factors can contribute to subtle shifts in the underlying character of policy in the process of its implementation. In this regard (echoing the findings in Case Study A), the complex elements which comprise the penal system operate as a series of filters, through which (in this particular case study) the symbolic discourse of the policy frame becomes translated into operational practices. As I will argue, the *transformative potential of the system is bound up with the ways in which these filters function at any particular juncture, their precise configuration either facilitating or inhibiting pressures for change.*

The main empirical example I am going to use in this case study is the implementation of the National Objectives and Standards for Social Work Criminal Justice Services and the accompanying 100 percent funding initiative. As highlighted in the previous chapter, this policy has had number of profound implications for the parole system, in particular with regard to the nature and status

of throughcare services.<sup>28</sup> One of the main objectives of the policy is to encourage the Parole Board to release prisoners on licence at an earlier stage, through the provision of high quality community-based social work supervision (as measured by success in effecting reductions in offending; see McArà 1998a). The policy itself is premised on the view that prison is ineffective as a site for rehabilitating offenders and, as a consequence, resources should be targeted on community-based interventions.

The research findings referred to in this case study are derived from interviews with officials within Central Government (namely a social work administrator, a member of the social work inspectorate and three officials from the parole and life licence division), prison social workers (one from each of the four study prison units, see Annex 1) and community-based social workers (one group interview conducted in each of the four study areas).

*I am going to begin this case study with a brief overview of the organisational, funding and management arrangements introduced by the policy. The chapter then divides into three parts.*

Part 1 explores policy implementation at a strategic level within the system; that is the process of putting in place the structural framework of the policy (for example the implementation of required organisational changes within central and local government and the 100 percent funding arrangement itself). It highlights the ways in which power struggles within Central Government and between Central Government and local authorities, have served to re-shape policy in the process of its implementation. In addition it shows the constraints placed on implementation processes by existing funding arrangements (a theme which is picked up again in

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<sup>28</sup> Throughcare services were perceived to be the most poorly developed aspect of social work criminal justice services prior to policy implementation (McArà 1998a)

Part 2 and Part 3 of the chapter) and by existing management structures within local authorities.

Part 2 examines implementation from the perspective of “customers” for social work parole services within Central Government<sup>29</sup>; specifically the parole and life licence division. This part shows the way in which both policy networks and occupational cultures impact on implementation processes, with each having the potential to inhibit implementation in ways which skew the original policy aims.

Part 3 explores policy implementation at a practitioner level; that is the ways in which the policy has impacted on the nature and function of social work practice in the parole system. It highlights the manner in which social workers have the capacity to resist aspects of policy which do not accord with the imperatives of their own occupational culture. In addition it demonstrates the ways in which breakdowns in internal linkages between agencies in the system can again inhibit implementation processes.

The chapter will finish with a consideration of the implications of the findings for an understanding of systematicity and penal transformation.

### The Policy

The aim of the National Objectives and Standards (the National Standards) and the 100 percent funding initiative is to promote high quality management and practice in social work, the most effective and efficient use of resources, and to provide social work services which have the confidence of key criminal justice decision-makers (such as the Parole Board and the judiciary) and the wider public (McAra 1998a).

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<sup>29</sup> The term customer is used to indicate divisions within the Scottish Office which make use of social work services in the course of implementing policies associated with their particular responsibilities, but which play no particular role in the management, resourcing or administration of social work.

As indicated in chapter 3, the specific objectives of the policy are: (i) to reduce the use of custody by increasing the availability, improving the quality and targeting the use of community-based court disposals and throughcare services on those most at risk of custody, especially young adult repeat offenders; and (ii) to enable offenders to address their offending behaviour and make a successful adjustment to law-abiding life.

The National Standards map out new roles for Central Government and local authorities with regard to the administration, review and planning of policy. As part of the policy it is the responsibility of Central Government to review, in consultation with local authorities, the general organisation and management of social work services, the national objectives, priorities and standards as well as the funding arrangements. To assist with the review, Central Government has responsibility for developing centralised management information systems in consultation with the local authorities and other interested parties. The aim of such systems is to inform policy and resource planning and to contribute to the overall evaluation of the policy. Such systems are also intended to assist local service planning, management and oversight of service provision (SWSG 1991). In addition to this, SWSG has the responsibility (subject to Ministerial and Parliamentary approval) to advise on, and determine the level of, resources required to meet the standards, to provide funding for those services eligible for the 100% grant, and to administer the grant (McAra 1998a).

National Standards implementation coincided with the establishment of the social work inspectorate (SWSI) which was given, inter alia, the task of monitoring and evaluating the implementation and operation of the National Standards. One of its key functions is to review the performance and outcomes of services provided by local authorities and other agencies.

As a result of National Standards implementation, local authorities now have the responsibility to provide services which match up to the requirements of the standards. They have had to develop organisational structures directed towards achieving a coherent approach to service delivery, a key feature of which is the appointment of specialist staff who are devoted to criminal justice work and the appointment of sufficient staff at each organisational level (McAra 1998a). As a consequence local authorities also have to develop education and training strategies.

Additionally local authorities are now required to develop, implement and review strategic plans. These plans should be aligned and integrated with policy planning for other social work services provided by local authorities (such as community care and child care) and should be developed within a framework of priorities laid down annually by SWSG. In particular local authorities should focus on the most effective and efficient use of resources, should reflect the contribution that other agencies at both a national and local level can make to service provision and should assist managers and practitioners to measure both performance and outcome. The strategic plans have to be developed in consultation with other service providers such as the independent sector and service users such as the courts or the Parole Board. In conjunction with strategic planning provisions the local authorities also have to devise localised systems for monitoring and evaluating policy implementation.

Where independent sector agencies are involved in service provision they too have to meet the requirements of the National Standards, and develop their own management information systems and arrangements for training staff.

As indicated in chapter 3, these aspects of the policy represent a sharpening of focus of social work criminal justice services rather than a wholesale transformation. I now want to turn to an examination of the processes of implementation.



## Part 1: Strategic Issues

In this part of the chapter I am going to examine the process of policy implementation at a strategic level within the system. It is based on the findings from the interviews with social work officials (that is the social work administrator and inspector); more specifically their views on the main objectives of the policy and perceived facilitators and inhibitors of implementation.

### *(i) Responsibilities*

Each of the officials interviewed had differing responsibilities in respect of policy implementation. The social work administrator was primarily responsible for: overseeing the implementation process itself; liaising with local authority social work departments; ensuring strategic planning processes worked smoothly; and administering the new funding arrangements. By contrast the social work inspector was more concerned with monitoring and evaluating the professional performance of local authority social work departments, in particular developing and putting into operation, inspection instruments for measuring the extent to which new management and practice arrangements met with the requirements of the National Objectives and Standards. The interview data indicate that the specific role of each official had a profound impact on the way each perceived the main policy objectives and also shaped their views on the processes which either enabled or impeded policy implementation.

### *(ii) Policy Objectives*

There were strong differences of opinion between the social work administrator and inspector over the objectives of the policy in particular over the underlying character of service provision. The administrator advocated what may be termed an accounting model of service provision: laying emphasis on the policy objectives of reducing numbers in custody and the need for value for money and cost

effectiveness (an approach characterised by pragmatism rather than philosophical commitment). By contrast the inspector advocated a needs led model: focusing on the policy objectives of assisting offenders to tackle their offending behaviour and lead law-abiding lives through the provision of effective social work services (a predominantly rehabilitative vision of penal interventions). These differences were particularly marked over the issues of strategic planning for offender services and the development of management information systems.

### *Strategic Planning*

As highlighted above, strategic planning arrangements are intended to: ensure the most effective and efficient use of financial and other resources; assist service development; and provide a means of measuring performance and outcome. Within the policy there is a potential for tension between the requirement that plans should be geared to the development of services tailored to meet the needs of individual offenders and the expectation that services should be developed within available resources (McAra 1998a). Where strict cash limits exist (as occurred in the early to mid 1990s) there may be pressure to sacrifice what are perceived to be resource intensive services (as for example services targeted on individual need) to achieve economies of scale (through the provision of services targeted on groups of offenders).

The social work administrator's perspective on the strategic planning process was shaped primarily by his concern with financial resources. In his view local authorities did not give sufficient consideration to the availability of Central Government money when they developed their plans; knowing that Central Government was to meet the full costs of the services, local authorities tended to develop a more elaborate version of services than absolutely necessary to meet the requirements of the National Standards. This was described as akin to "shopping in Jenners when Marks and Spencer would do". Despite the importance accorded to

strategic planning in the policy, his division within the Scottish Office had resisted full implementation of the planning process because of financial constraints.

"I think strategic plans are a waste of time ....we might look at the plans if we can be bothered because we know we're not going to pay the money they've asked for. The National Standards were conceived and written without any regard as to how much they would cost to implement because *no-one knew*." (Social Work Administrator)

Underlying this perspective on strategic planning, however, was a deeper antipathy to certain aspects of the policy framework: in particular those which focused around needs led service provision. As highlighted above, his particular concern was to increase the number of offenders being dealt with in a community-based rather than custodial setting. This was predicated on local authorities targeting services on large groups of offender rather than on the needs of individuals.

"The emphasis will (have to) be changed away from the individual more towards dealing with a group....the problem is the emphasis on the individual, inevitably you run into the barrier do you wish to deal with a thousand people at a hundred pounds a head or 2000 at fifty pounds...my personal view is there isn't sufficient evidence to justify the costs that are involved in the individual (needs led) approach." (Social Work Administrator)

By contrast, the social work inspector's view of strategic planning was shaped by his concern with the development of services which could impact positively on offending behaviour. In his view the development of such services was crucially dependent upon effective planning processes and that these had been inhibited more by the failures to develop suitable management information systems (see below) as well as the cash limits within which the policy operated. The inspector commented that

financial constraints could impact adversely on the development of resource intensive services for high risk offender groups:

“The danger is that when you have resource constraints you go for quantity and to a far less extent than you ought, quality. You may get lots of people on supervision, but if you do not provide the programmes and inputs which are necessary to tackle offending behaviour you are not going to achieve the objective of reducing offending.” (Social Work Inspector)

This interviewee was inclined to view the progress made by local authorities in implementing the planning arrangements more favourably than the social work administrator, commenting that local authorities had achieved a great deal in the time available, in spite of the financial constraints.

#### *National Core Data System*

The differences in view over strategic planning processes are also reflected in interviewees perspectives on the development of management information systems, specifically the national core data system.

The development of the national core data system is one of the tasks outlined in the objectives and standards which has to be undertaken by Central Government in consultation with local authorities and other interested parties. The primary function of the system is to produce a data-base and provide a resource bank for the purpose of monitoring and assisting policy and resource planning. Although the implementation of other elements of the policy was subject to careful planning there had been no implementation plan for the national core data base (McAra 1998a).

There was consensus amongst interviewees that the data base had faced particularly acute teething problems and had been slow to develop. Contributing factors

included: protracted negotiations with local authorities about the manner in which the data should be collected; union disputes in some areas; and the time taken to develop and pilot the unit return forms on which the system was based (which had been substantial, see McAra 1998a).

More significantly, however, delays had occurred because of the tension that had arisen between the financing of service delivery and the development of the monitoring system. As a result of the financial constraints mentioned above, a choice had to be made between putting money into the provision of services or monitoring. The social work administrator was of the view that it was inappropriate to ration service delivery in order to set up the monitoring system and that the cost of providing the unit returns was prohibitive:

"I wouldn't like to tell the court, I'm sorry m' lud there's no probation this week because we're paying for the forms." (Social Work Administrator)

For these reasons the administrator reported that he had delayed the implementation of the data system for as long as possible in order to free resources for increasing the numbers of offenders being dealt with in a non-custodial setting (such as on parole or probation).

"I've stuck my finger in that dyke for as long as I possibly could so as the money's gone to provide services. I don't give a damn about professional performance it doesn't interest me. On the other hand I'm asked to find the money to pay for it." (Social Work Administrator)

The administrator did point out, however, that his views on the data system were beginning to lose sway within Central Government and that he was under increasing pressure to provide more resources for this element of the policy. In this respect

political imperatives (regarding the need for a longer term perspective on needs led service development) were beginning to override existing financial constraints.

The social work inspector, on the other hand, argued that when the tension had arisen between financing services and developing the data base, the development of the data system should have been given greater priority. This was because the data system was seen as a necessary element in developing effective services.

“Unequivocally there comes a time if you have to make a choice of allocating more money for service delivery or give that money to ensure that adequate management information systems are in place the decision has to be in favour of the latter not the former, because you will cut off your nose to spite your face if you do not.” (Social Work Inspector).

### *(iii) Facilitators and Inhibitors of Policy Implementation*

There was greater consensus amongst social work officials over a range of other facilitators and inhibitors of policy implementation.

Facilitators identified by interviewees relate mainly to a number of the policy imperatives themselves, in particular: the protection of resources through the 100 percent funding initiative (although the nature of funding was paradoxically also highlighted as an inhibitor see below); attempts to develop specialist social work services which were properly integrated into service delivery systems within social work departments as a whole; and finally the framework of the National Objectives and Standards itself which provided clear objectives and priorities. These elements of the policy frame were considered to have sharpened the focus of social work management and practice, thereby assisting the implementation of other dimensions of the policy (for example making it easier for social workers to put into practice the

requirements of the standards in respect of report preparation and the supervision of offenders).

Inhibitors, identified by interviewees, were more broadly based, relating to: organisational factors, the policy context in which the 100 percent funding initiative was being taken forward, the nature of 100 percent funding itself, and the role of the independent sector in service provision. I am going to discuss each of these in turn.

### *Organisational Factors*

Interviewees considered that the existing organisational structures in certain local authorities had inhibited implementation. The policy was based on the assumption that offender services were better delivered by specialist offender workers supported by managerial structures geared to achieving this end.<sup>30</sup> In the initial years of implementation (early to mid 1990s), however, specialist organisational structures existed in only a few local authorities.

Interviewees singled out local authorities with “semi-specialist” structures for particular criticism, where they involved semi-specialists at the point of service delivery (that is social workers with mixed case loads, weighted around 80%-20% towards offender work) and generic managers with wider concerns than solely offenders. Such structures were reported to be slow to deal with problems relating to offenders because of the priorities afforded by management to other client groups and because they lacked a coherent “command” structure.

### *Policy Context*

With regard to the policy context, concerns were expressed by interviewees that the policy was being implemented at the same time as other major social work

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<sup>30</sup> It should be noted, however, that the initial draft of the National Objectives and Standards was not prescriptive in respect of the type of organisational structure local authority social work departments should adopt (see Social Work Services Group 1991).

initiatives, such as community care. It was felt that in the competition for scarce resources offender services might lose out to services for other client groups. This could occur at both Central Government level (where the inspector stressed that there was a need for divisions to sustain their commitment or ownership of the policy in the face of other priorities) and at local authority level where generic managers might be tempted to focus attention on other politically sensitive areas of work (for example child protection).

“Offender services are a small fish in a large pool. There is a danger that the offender agenda will fall off the map or recede as other priorities come on stream. It’s a very real problem and it has to be managed.” (Social Work Inspector)

### *The Funding Arrangements*

Although interviewees argued that the 100 percent funding arrangements had in certain respects eased the process of implementation, officials also identified several difficulties which arose from the nature of the arrangements themselves. A particular concern was that they created boundaries between offender services and other elements of local authority services which could have a role to play in the offender field: for example mental health services; addiction services; child and family care services. Greater scope existed for multi-service co-operation (as required by the policy) but this could be inhibited by the different arrangements for the funding of these services.<sup>31</sup>

In addition, the policy requires local authorities to plan coherent strategies for the development of offender services as a totality and also to provide and manage these services economically, efficiently and effectively. Officials believed that the existing organisation of the 100 percent funding had led to a tension between these

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<sup>31</sup> These services are paid for by local authorities out of their general income.



elements. This tension arose because central funding did not (at the time at which the research was conducted) cover the full range of social work services in the criminal justice system. It was felt that local authorities would find it difficult to plan coherent strategies when differing funding arrangements existed for various services. Unless 100 percent funding was extended to all social work criminal justice services, the inspector, in particular, believed that the policy might be less cost effective than otherwise.

#### *The Role of the Independent Sector*

The final impediment to policy implementation relates to the role of the independent sector in service provision. The National Objectives and Standards state that local authorities should consider the contribution that the independent sector can make in the provision of services and resources for offenders. Officials agreed that local authorities had been slow to do so.

One of the key inhibitors of increased use of independent sector provision identified, was that local authorities had not yet uniformly developed the requisite skills in negotiation, contracting and monitoring to ensure the purchaser/provider relationship between local authorities and independent agencies worked effectively.

More importantly it was believed that local authority reluctance to make greater use of independent sector agencies reflected concerns that this was "the thin end of the privatisation wedge". Officials commented that such concerns had been anticipated by Central Government and that an attempt had been made to alleviate these anxieties by including in the funding initiative an arrangement whereby grant, for criminal justice services, was paid directly to local authorities. Where independent sector agencies were involved in service provision, the local authority had to fund them out of their grant. This ensured that the local authorities retained an element of control over their relationship with the independent sector.

(iv) Discussion

Having outlined the research findings in respect of policy implementation at the strategic level, I now want to consider their implications for an understanding of systemic functioning.

The interview data indicate that in the battle between SWSI and SWSG over whose vision of the policy should take precedence, SWSG were initially the victors: with financial imperatives (the accounting model) taking precedence over the more penal welfare based perspective of SWSI. This suggests that the early years of policy implementation were, *in practice*, characterised by pragmatism rather than commitment to a particular philosophy of punishment. Central Government was funding authorities to increase numbers of offenders being dealt with in a community-based setting (rather than custody) and sacrificing information tools which would have assisted a more strategic approach to the development of effective services based on individual need.<sup>32</sup>

These findings suggest that control over financial resources may be one of the key elements determining the precise configurations of power within the system, in particular with regard to which agents or agencies can influence the policy agenda as it is put into practice. This is reinforced by the data relating to the involvement of the independent sector in service provision. Local authorities were able to control (and indeed resist and slow down) the purchasing of services from independent sector agencies, precisely because Central Government had devolved control over that element of the funding arrangements to them.

An understanding of systemic relationships is, therefore, at one level, predicated on "following the money", with financial factors acting as a powerful filter (facilitating or

inhibiting operational practices and empowering those who control budgets and administer grants). It is, however, important to note the contingencies inherent within these processes. Although control over finance can give power, the research data also suggest that the balance of power (as measured by degree of influence over implementation) *between agents and agencies is a delicate matter and can shift over time*; indeed control of the policy agenda may be a short-lived affair. This is exemplified by the pressure that the social work administrator was under to free up resources for elements of the policy he had initially resisted implementing. As was argued, such pressures occurred because political imperatives (based on the need to develop *effective* programmes) began to take precedence over financial considerations. A further example of this, is the brokering that occurred between central and local government over the independent sector, mentioned above. Central Government attempted to buy off the compliance of local authorities in contracting services out, by allowing local authorities control over their relationship with the independent sector. Far from complying, local authorities used their devolved powers to slow down implementation processes.

The findings also highlight the ways in which existing organisational structures within the system can operate as a series of filters, facilitating or inhibiting implementation processes. This is illustrated by the way in which the managerial structures in some social work departments functioned as barriers to full implementation. It is also reflected in the *impediments to implementation posed by the ways in which budgets were organised within local authorities*. Structural features of the system can, therefore, create resistance and, in some cases, enable a degree of inertia to develop, towards policy imperatives.

To conclude Part 1, it would appear that policy discourse does not cascade easily into operational practice, it is reworked and in some cases resisted by a series of

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<sup>32</sup> These findings are confirmed by the research undertaken by Brown et al (1998) on the national and local context

structural filters. This is indicative of a degree of systemic dynamism which will be explored in more detail in the final section of this chapter.

## Part 2: Customer Perspectives

Part 2 of the case study explores policy implementation from the perspective of customers for social work parole services in Central Government. The findings on which it is based come from the group interview with three civil servants from the parole and life licence division of the then Scottish Office.

### *(i) Responsibilities*

The three officials had responsibility for administering and overseeing the supervision and (in relevant cases) recall to custody, of prisoners released on licence into the community, as well as providing administrative support and a secretariat to the Parole Board. These officials had, therefore, less of a role in (and little control over) the administration of organisational arrangements for social work policy implementation, but were concerned with the *effects* of such arrangements on community supervision for parole and life licencees and the quality of social work reports. As with social work officials, the specific responsibilities of the parole and life licence officials had a key role to play in shaping their perspectives on the objectives of the policy and on the relative success of implementation processes.

### *(ii) Policy Objectives*

With regard to policy objectives, parole and life licence officials laid greater emphasis (than did social work officials) on risk management and control of offenders, to the exclusion of the rehabilitative dimensions of the policy<sup>33</sup> (a predominantly actuarial vision of policy imperatives). Officials did, however, believe that risk reduction should, ideally, take place within custody (i.e. *before* release into the community) and that community-based social workers should only be required to supervise a low

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of social work policy implementation (as part of phase 2 of the Scottish Office programme of research).

risk population of offenders. This contrasts with the policy objective of enabling higher risk categories of prisoner to be dealt with in a community-based setting, because that is the context in which rehabilitation is best effected. It is clear, however, that the perspective of parole and life licence officials stems from the nature of their responsibilities within the parole system. They viewed successful completion of licences as an important indicator of their own performance. Under these circumstances it is unlikely that they would welcome higher risk offenders being released into the community (given their negative views on the efficacy of social work services discussed in detail below).

### *(iii) Inhibitors of Policy Implementation*

Three main inhibitors to policy implementation were identified by interviewees relating to: the policy context within which social work policy was being implemented; resource constraints and the nature of funding arrangements; and the culture of social work. I'm going to discuss each in turn.

#### *Policy Context*

Interviewees believed that there required to be good co-ordination between the different policies which provide the framework for the parole system (namely social work, prison, parole and early release policy) and that shortcomings in one element of the policy frame could impact adversely on the effectiveness of the others. There was consensus amongst interviewees that aspects of prison policy, in particular sentence planning, had inhibited the implementation and development of the social work contribution to parole.

Scottish Prison Service policy states that sentence planning should assist in the process of risk reduction by enabling prisoners to address their problems (including their offending behaviour) and providing opportunities for self development (Scottish

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<sup>33</sup> This is discussed in more detail in chapter 3.

Prison Service 1990). Officials commented that the current operation of sentence planning was inadequate. It was described as a "passive" process where prisoners were "sentence planned" as part of other general induction procedures. Officials were of the view that the plans were rarely put into action because the prison service was both overworked and initiative laden. It was felt that more effective planning could identify prisoner problems at an earlier stage and develop action programmes in order to address them, thus ensuring that the parole and life licence population, with which social workers had to deal, were lower risk.

Interviewees felt that, in general, there was the lack of co-ordination between prison and social work policies and this was exemplified, in particular, by poor arrangements for liaison between divisions within the Scottish Office (namely SWSG, SPS, the parole and life licence and Criminal Justice divisions) and also outside agencies (such as SACRO and APEX). Although their own division had been involved in the consultation process during the development of the National Standards and 100 percent funding initiative (see chapter 3), they did not feel that they had had an adequate input into the new arrangements. A contributing factor had been that the divisional representative on the throughcare consultation group had been someone with little experience or knowledge of social work practice with released prisoners. (As they admitted, the "wrong" person had been sent).

#### *Resource Constraints and Funding Arrangements*

There was agreement amongst interviewees that resource constraints and the nature of the 100 percent funding arrangements had also played a role in impeding policy implementation. In their view community-based throughcare services continued to be of low priority within social work departments and as a consequence tended to be poorly resourced (in spite of the availability of Central Government grant). They believed that local authorities had focused their resources on providing services to

the courts at the expense of throughcare.<sup>34</sup> Key concerns focused around the resources available to sustain reporting frequency on released prisoners, which were perceived to be minimal.

“ Sometimes because of financial constraints (social workers suggest) three monthly reporting should be extended to six monthly. It could be argued that we shouldn’t dilute our requests (for frequent reporting) simply to help out social work services.....Its a question of resources and time. I feel that supervising officers in the field ought to be going out and taking on more...”  
(Parole and Life Licence Administrator)

A further concern was the under-resourcing and hence under-development of prison social work services. Prison social work services did not (at the time of the fieldwork) come within the scope of the 100 percent funding initiative nor were they subject to National Standards. They were funded directly by Central Government through the Scottish Prison Service but were managed by (and therefore included within the planning arrangements of) local authority social work departments. It was believed that social work departments could be hampered in their development of the prison social work role because SPS would not “stump up the cash”.

### *Social Work Culture*

The final impediment to policy implementation, identified by interviewees, relates to the nature of social work culture itself. Interviewees felt that social workers were generally too “soft” in their approach to supervision and that in practice offenders often controlled the relationship between client and supervising officer.

“...from experience the help element (has been) a priority with individual social workers almost to the point of naiveté... the balance will have to shift

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<sup>34</sup> Again this finding is confirmed by Brown et al (1998).

from care to control... they don't pay sufficient attention to the risk or control element of it at all .... I wouldn't see it as them controlling the individual I would see it the other way around." (Parole And Life Licence Administrator)

A contributing factor was that inexperienced social workers were often assigned to (what interviewees perceived as) the most difficult cases. Effectiveness of policy implementation (predicated, according to these officials, on the ability of social workers to control licencees) could be dependent, therefore, on the skills of individual social workers.

Interviewees were particularly exercised by the nature of social work culture because of the changes that were being brought about by the Prisoners and Criminal Proceedings (Scotland) Act 1993.<sup>35</sup> The arrangements introduced by this Act meant that offenders who were not given parole would be on licence in the community from their two-thirds of sentence date until the end of sentence (the so-called non-parole licence). Also, the courts would be empowered to impose a supervised release order (to be supervised and managed by the social work department) on any offender thought to be high risk, serving a sentence of less than 4 years (such offenders would no longer come under the scope of the parole system). These new types of licence were likely to involve higher risk populations than parolees, with such licencees being, in effect, "conscripts to supervision". For these reasons interviewees considered that the risk management and controlling elements of community-based social work supervision would be of increasing importance, with social workers requiring to take a much harder line than in the past.

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<sup>35</sup> The Prisoners and Criminal Proceedings (Scotland) Act 1993, had not been fully implemented at the time at which the field work was conducted.



#### *(iv) Discussion*

A number of similar themes emerge from the interviews with parole and life licence officials as from those with social work officials, in particular with respect to financial and organisational filters within the system.

As with social work, the responses of parole and life licence officials highlight the ways in which control over resource allocation provides leverage for agencies, in respect of which elements of the policy they choose to promote (in this case local authorities chose to pump resources into court-based social work services rather than throughcare). The responses also reflect social work officials views of the ways in which policy implementation was constrained by the different funding arrangements which existed for a number of social work criminal justice services. Lack of control over financial resources for prison social work, was considered to have undermined the ability of local authorities to plan and expand throughcare services in a coherent fashion.

The findings also indicate that the policy context in which social work policy was being taken forward created a degree of inertia. Unlike social work officials, who highlighted competing priorities as a key impediment, parole and life licence officials believed that it was the failure of other sites in the system (specifically SPS) to implement fully their own policies, which had had an inhibiting effect on the development of the prison social work role. This highlights the interdependence of policy sites within the system and the potential significance of policy networks for systemic functioning (see below).

Finally, the interview data suggest that occupational cultures have the potential to act as a powerful filter within the system. Such cultures can create a degree of resistance to particular policies and when this occurs it may limit the extent to which initiatives are put into practice (especially in the aspects of the social work

role over which practitioners have a high level of discretion). Parole and life licence officials were concerned that social work practitioners were too orientated towards the penal welfare rather than the risk management elements of the policy frame and, as a consequence, supervision would be focused on care rather than control. (The extent to which social worker practitioners shared these views will be explored in Part 3 below.)

To conclude this section, the views of the customers for social work services reinforce the earlier findings regarding the role of filters within the penal system. The data suggest that both structural filters (such as the nature of the funding arrangements), and cultural filters (social work perspectives on the appropriate aims of practice) can subtly transform policy discourse as it is put into practice. The implications of this for an understanding of penal transformation will be examined in the final section of the chapter.

### Part 3: Practitioner Issues

Having set out the findings with respect to policy implementation at a strategic and customer level, I now want to examine implementation processes at the practitioner level within the parole system. The findings on which this element of the case study is based are derived from the interviews with prison and community-based social workers.

#### *(i) Prison Social Workers*

Prison social workers have responsibility for the preparation of the prison social work report in the parole dossier and for the provision of services within prison to enable prisoners to address their offending behaviour. Interviewees were asked to comment on the objectives of the policy and facilitators and inhibitors in respect of these two main roles.

### *Report Preparation*

The National Standards state that the key purposes of prison social work reports are: to provide information which will assist the Parole Board to make decisions on the early release of determinate and indeterminate sentence prisoners; to identify and assess risk of further offending on release; and to provide an opportunity for the discussion of release plans (SWSG 1991). Reports should be based on at least two interviews with the prisoner for the specific purpose of writing the report. Prison social workers, additionally, must liaise with the social work department preparing the home circumstances report (see below). The National Standards also require prison social workers to provide and assess eleven types of information ranging from the prisoner's response to imprisonment to the availability of specialist resources in the community; and risk of re-offending.<sup>36</sup>

The interview data indicate that a number of factors inhibited prison social workers from fully putting the policy into practice with regard to report preparation. These relate to: workloads; inability to access verified information; poor liaison between prison and community-based social workers; and the prison social workers own resistance to aspects of the National Standards. I'm going to discuss each in turn.

#### *(a) Workloads*

Workloads made it difficult for social workers to meet standards requirements in respect of the basis of reports, in particular the requirement that two interviews should be conducted with the prisoner solely for the purpose of report preparation. They also impinged on the ability of social workers to check out information given to them by the prisoner (especially with respect to prisoner perceptions of the level of family support he or she was likely to receive on release into the community and the general suitability of domestic arrangements). Interviewees, however, took a

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<sup>36</sup>Other types of information required by the standards (not mentioned above) are: the prisoner's personal circumstances; attitude towards the offence and to the sentence; attitude to release plans; employment prospects

Lack of relevant information was viewed as a particular problem when making assessments of risks of re-offending. Interviewees commented that they were often “working in the dark” as they did not generally have access to verified information about the index offence nor previous convictions. (In this respect social workers did not have sufficient information to enable them to assess risk according to the guidance in the National Standards.) Some social workers reported that they had access to prison files but these were considered to be superficial. Only in one of the prison units was the note of circumstance<sup>37</sup> regularly available. As a result of limited information, social workers often had to rely on the prisoner for details of the offence and this was viewed as being highly problematic.

*“There’s no verified information and that’s dangerous. A lifer I worked with said he had just hit someone over the head with a bottle but [I found out later] he also stabbed him eight times with a kitchen knife, strangled him with a leather belt and hit him over the head with a kitchen clock - a frenzied attack...that gave me a different insight. [We are] unable to get the information to get that insight easily.”(Prison Social Worker)*

A further difficulty in making risk assessments related to the criteria used to measure risk. Interviewees commented that it was often “impossible” to predict future behaviour particularly in relation to substance misuse. Although a prisoner might have made some progress in addressing their addiction problems within a prison-based setting it was difficult to assess what their reaction would be on release when such substances were more readily available. Similarly any change in the prisoner’s attitude to the offence was difficult to measure without access to verified information on the offence, as were risk assessments of indeterminate sentence

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previous social work supervision; and family and other significant relationships.

<sup>37</sup> The note of circumstance is prepared by the Scottish Office Home Department. It gives details of the nature and circumstances of the offence

prisoners. This was because such prisoners were often first offenders with no history of violent behaviour:

“Lifers are an area I find very difficult...you're talking about a one-off offence. The majority of lifers did not intend to kill their victims so the consequences of their actions are greater. In one of my groups there's one doing four years for attempted murder. Now he had stabbed his victim 27 times. A lifer in the group who disarmed his victim stabbed him once.....They can have a totally unblemished prison career but to me that's not an indicator. Its an area no one finds easy. I don't always offer a risk assessment because I wouldn't feel equipped to do it.” (Prison Social Worker)

#### *(c) Poor Liaison*

Poor liaison between prison and community-based social workers was identified as a further impediment to policy implementation. Prison social work interviewees commented that difficulties sometimes occurred in finding out which social worker was preparing the home circumstances report. Often there were delays in appointing a supervising officer for a case (as area teams were either not aware that a report was required or were over-committed in other aspects of their role). This could impact adversely on report preparation, especially with regard to the identification of suitable community-based services. Unless good local information was available, identification of such services was described as a “bit of a hit or miss affair”.

#### *(d) Resistance to Policy Requirements*

Interviewee responses indicate that prison social workers resisted putting into practice key elements of the policy where they believed such elements to be unnecessary and of little value. Much of this resistance was directed at aspects of

the standards which, in their view, community-based social workers were better placed to provide. This included both assessments of family (or other significant) relationships and more significantly the development of a release plan. A common perception amongst interviewees was that these should be the responsibility of the social worker preparing the home circumstances report.

“The area team should identify resources. It’s not of paramount importance in my reports.” (Prison Social Worker)

“It’s not my role to provide a release package. My stuff is really risk of offending, but I suppose I would check out the availability of services. If I make a recommendation I always check out services.” (Prison Social Worker)

#### *Prison Social Work Services*

I now want to turn to the second of the prison social work roles: the provision of services within prison. As was mentioned, such services were not subject to National Standards at the time of conducting the fieldwork, although they were to be included within local authority strategic plans (thus coming under the ambit of the policy). They were also subject to detailed policy and practice guidance contained within the document “Continuity Through Co-operation” (SPS/SWSG 1989) which forms the basis on which National Standards have since been developed. This document describes the main activities of prison-based social workers as: the assessment of personal and social need; individual and group work with prisoners and their families to assist with eventual resettlement into the community; and the development and provision of programmes of intervention to address problems commonly presented by prisoners. It also states that social workers must be freed to undertake professional tasks and that the development of the prison officers welfare role has a key role to play in this (SPS/SWSG 1989).

As with parole and life licence officials, prison social work interviewee responses indicate that key inhibitors of the prison social work role were SPS failure to implement key aspects of prisons policy; and the nature of 100 percent funding arrangements.

*(a) Prison Services and SPS Policy*

Interviewees considered that prisoners required a network of services provided by both social work and other agencies to assist them to make progress in custody. However such a network did not exist in most establishments. Absence of specialist resources meant that social workers often had to "stand in", in most cases where they had little specialist training and little time (due to heavy workloads<sup>38</sup>). Key gaps identified in a number of establishments were: psychiatric and psychological services; and specialist drugs and alcohol counselling services.

There was consensus amongst prison social work interviewees that sentence planning could play an important role in facilitating a network of support for a prisoner. Prison social workers reported that sentence planning had faced acute teething troubles (confirming the views of parole and life licence officials above). A number of interviewees considered that services were often poorly targeted and a requirement was identified for more multi-disciplinary reviews of prisoners and for better inter-agency co-operation in planning for individual need. One interviewee commented that sentence planning had been virtually abandoned in the establishment in which she worked.

"Sentence planning has never worked. We've never really had multi-disciplinary reviews of a person although it started to happen. It's

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<sup>38</sup> This was a particular problem in singleton social work posts (see McAra 1998b).

frustrating. Initiatives happen for so long and then they stop and they're not reviewed." (Prison Social Worker).

A further failing in SPS policy related to the welfare role of prison officers. Giving prison officers greater responsibility for welfare tasks was expected to free up time for social workers to engage in tasks more akin to their professional training (SWSG/SPS 1989). There were variations in view amongst prison social workers about the extent to which this had happened. While two reported that prison officers in their establishments now undertook all welfare tasks, in other units arrangements had broken down (with lack of training for prison officers being cited as the primary cause).

#### *(b) Funding Arrangements*

While prison social workers were of the view that the implementation of Continuity through Co-operation had improved the quality of prison social work, they also considered that there was little evidence of a strategic approach to service development and that prison social work was often under-resourced. One view was that it was difficult to take a strategic approach where there was a tension between the funding and management of social work services in prison (that is where Scottish Prison Service was responsible for funding prison social work and local authority Social Work Departments were responsible for managing the services.) Echoing parole and life licence officials, prison social workers considered that budgeting restrictions (imposed by SPS) impacted adversely on the potential for developing services.

To conclude this section, interviewee responses indicate that impediments to policy implementation occurred where there were linkage failures in the system between community and prison-based social workers over report preparation and more generally between SPS and social work over service development. Impediments



could also occur because social workers did not have access to relevant tools to enable them to fulfil their function as required by the policy. Finally interviewee responses highlight the cultural resistance of some social workers to key elements of the policy and their ability to resist implementation in areas where they had relatively high levels of discretion.

#### *(ii) The Role of Community-based Social Workers in Policy Implementation*

I now want to consider the impact of policy implementation on the community-based element of the parole system. Community-based social workers have two key roles to play in the parole system, both of which are subject to the requirements of the National Standards. The first of these is the preparation of the home circumstances report in the parole dossier. These reports are intended to provide information to the Parole Board on the circumstances in the community to which the prisoner will return and contribute to an assessment of the prisoner's likely risk of re-offending on release. The second role of community-based social workers is the supervision of offenders released on licence into the community (released prisoners not subject to licence requirements can also seek voluntary assistance from social work departments and this, too, is included within the scope of the 100 percent funding arrangements).

As with prison social workers, community-based social workers were asked to comment on the objectives of the policy and facilitators and inhibitors in respect of their two main roles.

#### *Report Preparation*

The National Standards state that home circumstances reports should: describe and assess the social and family context to which the prisoner intends to return; indicate the nature of supervision which will be provided and any specialist facilities that might be offered; contribute to the assessment of risk of re-offending; and engage the

prisoner's family in planning for the prisoner's release. Reports should be based on at least one home visit to and one interview with the prisoner's family or other persons with whom the prisoner intends to live and contact and liaison with the relevant prison social worker. According to National Standards, home circumstances reports should provide and assess six main types of information including information on the environment to which the prisoner is to return and risk factors in relation to re-offending, social or personal breakdown.<sup>39</sup>

Factors identified by interviewees as impeding full implementation of the standards, with regard to report preparation, were similar in a number of respects to those identified by prison social workers namely: poor liaison arrangements; social work perception of elements of the standards as unnecessary; lack of verified information; and competing priorities within social work departments.

#### *(a) Poor Liaison*

Poor liaison and lack of inter-agency working was identified by most interviewees as a contributing impediment to policy implementation.

Key difficulties related to the level of contact that they were able to make with prison social workers for the purpose of report preparation. Interviewees believed that good co-ordination between the prison social worker and the community social worker over the timing of report preparation was crucial, especially with regard to making assessments of the prisoners needs. In practice however co-ordination was sometimes difficult to achieve, especially where prison social work units were staffed by singleton workers.

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<sup>39</sup> Other information required relates to: a range of background information including housing and financial factors; family attitude towards the prisoner; specialist programmes or resources in the community; the family's likely response to social work supervision of the prisoner; general level of support; and particular needs.

"It's unusual for me to phone the prison social worker to find out they're ahead of me in preparing the reports. Generally they'll say 'we're waiting for you to learn what your report says before we interview'. But that means that if you visit the prisoner's home address you don't have any information about the prisoner and the prison social worker's not met them either and therefore that delays you." (Social Worker)

Community-based social work responses also highlight poor inter-agency working between social work and other specialist agencies as inhibiting report preparation. Pressures in the system occurred because of the potential time-lag between a placement being arranged (at the report writing stage) and the date of release. Agencies which were frequently oversubscribed (such as supported accommodation) would not guarantee a place for the prisoner unless the social worker could guarantee in turn, that the prisoner would definitely be granted parole (a guarantee which social workers could not give). When a prisoner was recommended for an early review<sup>40</sup> by the Parole Board rather than release on parole, the placement could fall through.

Offenders with mental health problems were identified by a number of interviewees as a key group for which it was difficult to make referrals to specialist programmes at the report writing stage. A common experience was the difficulty in obtaining a community care assessment for such prisoners, as community care teams (within local authority social work departments) did not consider that offenders fell within their remit. In one area the practice team manager required to negotiate at length with the community care team managers over individual cases.

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<sup>40</sup> An early review is where the prisoner is not recommended for release on parole at current review but where the Board agree to review the case before the normal date at which the case would be re-referred for consideration of release (one year).

A further concern relating to poor liaison, was that social workers rarely received information about the outcome of a case. While the National Standards state that the author of the home circumstances report should inform the family of the prisoner about the outcome of the parole decision, a number of interviewees commented that they often found out about the outcome from the families.

"It's like sending reports into a black hole....It would be nice to get the outcome. Families get informed before we do, from the prisoner. We're supposed to give the family the information but they tell us." (Community-based Social Worker)

Social workers attributed lack of information to failures on the part of The Scottish Office Home Department to provide timeous feedback to local authority social work departments on the outcome of individual cases.

#### *(b) Resistance to Policy Requirements*

Interviewee responses indicate that most community-based social workers did not consider that all of the requirements of the standards in respect of home circumstances reports were wholly necessary and, as a consequence, resisted implementing them. A common view was that the key purpose of the report was to provide information about the suitability of the release address only (rather than the range of information outlined above).

"I gave very basic information. What they really want to know is if the release address is OK. The report has no other value." (Community-based Social Worker)

In one area social workers commented that their line managers had given them instructions to provide only this type of information.

Most felt that the risk assessments required by National Standards would be of little value given the level of information available to them (see below for further discussion) and that the prison social worker was in a better position to develop a release package for the prisoner and set up the required services in the community.

“It’s important that it’s included in the dossier - but it’s not appropriate for us to do it given the limited facts that we can take into account. The prison social worker is best placed.” (Community-based Social Worker)

*(c) Lack of Information*

As with prison-based social workers, interviewee responses indicate that community-based social workers rarely have access to the types of information which would enable them to put the standards into practice.

All community-based social work interviewees agreed that factors relating to risk of re-offending were extremely difficult to assess as they too lacked information about the prisoner’s index offence and previous convictions. Social workers said that they might contact the prison social worker for information relating to the offence but they recognised that prison social workers often did not have access to the relevant information either. One social worker said that they had on occasions contacted the procurator fiscal for details of the charge and if this was unavailable they would make use of the local library newspaper archives for information!

It was easier for social workers to make assessments if they had access to, or, in a minority of cases, had been the author of, the prisoner’s social enquiry report. However as there was no guarantee that prisoners would be returning to the same area where the social enquiry report had been prepared, access to these reports was limited.

A common view was that a proper assessment of risk could only be undertaken if the social worker had direct contact with the prisoner to discuss the offence and their attitude to their offending behaviour. While some interviewees had in the past visited the prisoner, it was recognised that this was not practical in all cases, given the nature of their workloads and the distances sometimes involved. Furthermore, social work managers in one area would not sanction such visits because of limited resources.

#### *(d) Competing Priorities*

The final inhibitor mentioned by interviewees was that parole report work often suffered because of competing priorities within social work departments. In one area for example, social workers commented that social enquiry reports were prioritised and that delays in preparing home circumstances reports might occur during periods when a large number of social enquiry reports were required by the courts. This reflects the concerns of parole and life licence administrators that court-based work tended to be higher profile.

#### *Community-based Social Work Services*

As was mentioned, one of the main objectives of the policy is to improve the quality of the community-based element of throughcare services so as to encourage earlier release on licence and compliance with licence requirements. Community-based throughcare services include both specialist services which been developed to tackle particular problems presented by offenders (such as specialist drug and alcohol counselling) as well as the more general supervision which social workers undertake with parolees and life licencees.

Both prison and community-based social workers were asked to comment on the development of services, community-based social workers were additionally asked to comment on social work supervision.

The interview data suggest that key impediments to policy implementation related to: lack of development of the requisite range of services required and funding difficulties; poor co-ordination between prison and community-based social work; and cultural resistance to some elements of the policy frame by social workers involved in statutory supervision.

*(a) Service Underdevelopment and Funding*

There was consensus amongst interviewees that there was an uneven spread of services across Scotland. Community-based social workers from the rural study site and prison social workers commented, in particular, on the difficulties in both developing and accessing services in rural areas. It was recognised by these interviewees that there were insufficient numbers of offenders in such areas to make a range of specialist services viable. Similarly transport difficulties often made it difficult for offenders who lived in the more remote areas of Scotland to access services.

"The further up north you go the more difficult it is. If they're going back to the Highlands then you just pray that they've a supportive family."

(Prison Social Worker)

Interviewee responses suggest that the implementation of the 100 percent funding initiative may not have impacted, to date, on the uneven spread of services. There was consensus amongst most interviewees that policy implementation had led to the proliferation of certain services, in particular alcohol and drug counselling services, while other areas were markedly less well developed.

Services identified as requiring further development were: specialist services catering for the needs of young adult offenders, women offenders and violent offenders; and psychological counselling and other services for mentally disordered offenders.<sup>41</sup> A key concern was the lack of supported and hostel accommodation. Prison social workers in particular commented that some areas in Scotland lacked both types of accommodation. Where a prisoner requiring accommodation was returning to one of these areas, prison social workers had to try and access placements in other local authorities. On occasions difficulties had occurred in determining which of the local authorities should use their grant to fund the placement.

"There's no accommodation in "B" so if they're from "B" and homeless its "E's" resources that have got to be approached. And then there's the problems of funding, to get someone to be responsible for funding a residential placement." (Prison Social Worker)

#### *(b) Poor Liaison*

Poor liaison between prison-based and community-based social workers was identified as a contributory impediment to policy implementation, particularly with regard to release arrangements. The National Standards state that following notification of a release date the prison-based social worker, the supervising social worker in the community and the prisoner should draw up a statement identifying and assessing the prisoners needs and outlining detailed pre- and post-release plans (SWSG 1991). However community-based social work interviewees commented that this three way meeting did not take place as often as it should because of time constraints. A number of licencees were therefore being released without this detailed planning. Difficulties in this regard were compounded because community-

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<sup>41</sup> A particular concern of social workers was that no one agency was willing to take responsibility for mentally disordered offenders and that greater clarification was required as to which agency should take the lead role



based social workers were often not informed about the outcome of cases for which they had prepared a home circumstances report.

*(c) Cultural Resistance*

Finally the responses of interviewees highlight a degree of cultural resistance to certain elements of the standards.

According to the National Standards the principal focus of community-based work with released prisoners should be addressing offending behaviour. Community-based social workers, however, were strongly of the view that their main role (particularly in the first few months following release) was to ensure that practical arrangements for the licencees worked well (such as accommodation and finance). Similarly there was resistance to the exhortation in the standards that failures to comply with licence requirements during the first three months of a licence should be regarded particularly seriously. A number of community-based social workers interviewed commented that the standards were too prescriptive in this respect. Because the transition from prison to the community was a particularly difficult one and because newly released prisoners were especially vulnerable, supervising officers should be more *lenient* with licencees in the early stages of supervision.

"Shelter, food, money...if you haven't dealt with them you're onto a loser. You can't possibly expect to supervise someone of no fixed abode and who's skint .... There needs to be a cooling off period in the first three months if they don't turn up for appointments. There's a need for a space for a relationship to be established without .... saying if you don't turn up its a written warning. Firmness during this period but not rigidity."  
(Community-based Social Worker)

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(whether it be the Health Board or social work department). Such cases were reported as involving a great deal of

To conclude this section, community-based interviewee responses highlight a number of similar themes to the interviews with prison social workers. The findings suggest that effective policy implementation is predicated on good inter-agency co-ordination (which rarely occurred); access to relevant information (which was not forthcoming for the majority of social workers) and cultural acceptance of policy imperatives (which was not wholehearted).

### *(iii) Discussion*

I now want to consider the implications of the findings from both the prison and community-based social work interviews for an understanding of systemic functioning.

As with other interviews, the findings provide further evidence for the ways in which financial arrangements can act as an important filter within the system, having the potential to inhibit or facilitate initiatives or to give leverage to certain agencies to resist or slow down implementation processes. The prison social work role in particular seems to have been severely constrained by SPS control of resources. Where local authorities have no control over resources this can hamper their ability to plan coherent strategies for service development. However the findings also indicate that in the areas where local authorities do have some degree of discretion over resource allocation, they have used this to skew the focus of policy implementation towards the court based aspects of social work services (in practice this is likely to have been detrimental to the development of the community-based aspects of throughcare services as well as the prison social work role).

It would appear from the findings that cultural resistance to policy imperatives may also create a degree of inertia within the system. Where practitioners are able to exercise discretion they can do so in ways which subtly change the character of

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“brokering” between agencies.

policy. In this case prison and community-based social workers reconstructed the imperatives of policy away from their original objectives towards an approach more akin to their own customary styles of working and to their views on the appropriate function of social work: an approach characterised as much by pragmatism than by a commitment to a particular philosophy of punishment. One of the consequences, which flows from this, is that the nature of community-based supervision is unlikely to have changed significantly, with social workers focusing more on practical arrangements rather than addressing offending. In addition, social workers are not providing the types of information in their reports (limited by available information, time constraints due to workloads and views on the "proper" function of reports) which were intended to encourage the Parole Board to release prisoners on licence at an earlier stage.

Finally the findings indicate the complex inter-relationships that exist between different elements of the system, how particular elements may be dependent on others for their smooth functioning and the way in which a break-down in these linkages can lead to inertia and stasis within the system. This is exemplified by interdependence of SPS and social work policy: where break-downs occur in the former then this limits the effectiveness of the latter. It is also highlighted in the importance of good intra-agency co-ordination: where there is poor internal linkage within social work departments (as seems to have occurred between criminal justice and community care teams, over the release of prisoners with special needs, and between prison-based and community-based social workers, over release procedures and report preparation) then this too can inhibit the operationalisation of policy.

### Systematicity and Transformation

I now want to draw together the points made in respect of implementation processes at the strategic, customer and practitioner levels to consider their implications for

the elements of the model of system, set out in diagram 4.1, and for an understanding of penal transformation.

#### *(i) Characteristics of System*

The findings I would suggest highlight four key aspects of systemic functioning which are reflexively related to each other: (i) the exercise of power, (ii) cultural filters, (iii) structural filters and (iv) policy networks.

#### *The Exercise of Power*

The data indicate firstly that relationships between and within agencies comprising the penal realm (the linkage mechanisms described in chapter 2) are characterised by a degree of dynamism. This dynamism is fuelled in part by a struggle for control over the policy agenda, illustrated by the tensions within Central Government between SWSG and SWSI over whose vision of the policy should take precedence and between Central Government and local authorities over resource allocation and independent sector involvement in service provision. The balance of power within the system would seem to be in a continual process of adjustment, exemplified by the increasing influence of SWSI over implementation processes and the brokering that occurred between central and local government. The shifting balance of power suggests that while the system may, at certain junctures, attain a degree of dynamic equilibrium, it will rarely be static. In this respect the exercise of power is always likely to be in the process of accomplishment, never fully complete.

#### *Cultural Filters*

Secondly the findings highlight the significance of cultural filters in the system. It would appear that the symbolic discourse of the policy frame is interpreted in different ways in each of the levels of system reviewed, with perspectives on the policy being mediated or filtered by the operational cultures of the agencies at each of these sites. The extent to which these differing perspectives impact on policy

implementation is dependent on the power of agencies to influence operational practice.

At the strategic level of implementation, the shifting power relations between SWSG and SWSI highlight a change in emphasis in practice from a pragmatic, accounting model of service provision to one more sharply focused on offender needs and rehabilitation. By contrast the actuarialist perspective of the parole and life licence division has had less impact. This is primarily because the division is a customer for services and its ability to influence implementation processes is, thereby, limited to exhortation (opportunities for this have been limited).

At a practitioner level in the system, social workers appear to adopt a pragmatic approach to their function, making a rational calculation as to which elements of the policy they have the power to resist and which they have to put into practice. At this level community-based practice is characterised by a short-term focus on enabling reintegration into the community (for example by ensuring that licencees have somewhere to live and can access benefits etc.) rather than commitment to the broader rehabilitative aims of addressing offending.

The findings with respect to each level of the system, highlight the ways in which policy discourse functions to provide a conceptual vocabulary for the system. The vocabulary, however, is improvised on and reconstructed by, different agencies within the system. It operates thereby as a resource for the system rather than a tightly knit framework absorbed by all, with power accruing to those who can put their version of the vocabulary into practice. As suggested above, the exercise of power in the system is a dynamic process, rarely stable, never static.

### *Structural Filters*

This leads on to the third of the characteristics of system. It is evident from the findings that agencies and agents have a degree of what I shall term discretionary space within the system. Although the limits of this space are bounded by both the conceptual framework of the system and the particular functions of agencies, the internal aspects of this space can be shaped and transformed by the agencies as they see fit. In this respect discretionary space can function as a structural filter in the system. It provides agencies with a potential bulwark against changes demanded by policy or an arena of influence in which agencies can rework policy discourse and operationalise a reconstructed practice. This is exemplified by the ways in which local authorities used the space accorded to them, to skew policy implementation towards the needs of the courts rather than throughcare and the parole system and to inhibit the involvement of independent sector agencies in service provision.

### *Policy Networks*

Finally the findings indicate that policy networks operate as a key internal linkage mechanism within the system: where failures occur in one element of the network this can have a detrimental impact on the effectiveness of policies in other sites. This is exemplified by the impediments to social work policy development caused by failures within SPS to implement key aspects of prisons policy. It is also highlighted in the failures within social work departments to co-ordinate different aspects of their role effectively. Although it could be argued that the findings indicate the non-systemic, relatively autonomous character of these agencies, I would contend that linkage failures are underpinned by a kind of negative or reverse relationality, with the breakdown or absence of links impacting and shaping policy development as much as presence of such links.

### *The Relational Model of Penalty*

What then do these four aspects of systemic functioning imply for the relational model of penalty?

According to the relational model of penalty, the penal system operates in a manner akin to an eco-system, characterised by both struggles for space and interdependencies between sites within the system. The above findings, I would suggest, strongly support this hypothetical reading of penal relations, in particular with regard to the ways in which power functions within the system. Both the competition for control over the policy agenda (power struggles) and the dynamic equilibrium that may be struck at certain junctures between different sites in the system (relative balance of power), highlight the *organic* qualities of intra-systemic relationships. The case study has shown, however, that the interdependencies between sites in the system are highly intricate and at times characterised by paradox, especially where linkages between agencies breakdown. While it might be expected that such breakdowns would lead to greater autonomy for the agencies involved, the evidence from this case study indicates (as noted above) that agency autonomy is likely to be compromised. Under conditions of negative relationality agencies are less able to control the policy agenda and less able to put their aims and objectives into practice.

The findings of this case study also indicate that the linear relationships drawn in Diagram 4.1 between symbolic representations, penal bureaucracies and penal practices are not straightforwardly causal in nature or function. This is because of the tendency for agencies to reconstruct and improvise on policy discourse as it is translated into penal practice, a tendency predicated upon the nature and extent of the discretionary space colonised by such agencies and, of course, the particular balance of inter and intra agency power relations inhering within the system at any one time. In this regard the relationship between symbolic representations and

penal practice could be characterised as one of qualified contextuality rather than direct causality.

*(ii) Penal Transformation*

I now want to turn to the implications which the above findings have, for an understanding of the intra-systemic processes underpinning penal transformation.

As was highlighted in chapter 2, the literature on transformation reviewed is predicated on the notion that there is a causal relationship between shifts in discourse and changes in practice. The literature however is more equivocal in respect of whose or which agency's discourse precipitates the change. Feeley and Simon argue that changes in practitioner discourse (as well as academic discourse) have been a prime mover within the system (a bottom up approach). By contrast Garland suggests that the key mechanism for change has been shifts in governmental discourse (a top down approach) whereas Bottoms highlights the importance of shifts within intermediate agencies such as the courts.

The research findings indicate that the relationship between discourse and practice is more complex than the reviewed literature, would suggest. Neither practitioner nor governmental discourse can be causal in the manner indicated: the discourse is reworked and transformed by agents in the course of their every day transactions and is sifted and reshaped by the filters that characterise systemic operation. Transformation would in effect demand a hegemonic moment for a particular vocabulary: a moment which either closed off discretionary space available to agencies or constructed an extremely high level of both consensus amongst participants in the system over policy imperatives, and political will to overcome the structural and organisational features of systems which have the potential to inhibit the transformative process.



Practitioners are unlikely to be able to construct such a hegemonic moment for their discourse given their lack of control over key attributes of power in the system: namely control over resources. Central Government would also have difficulty in this regard, given that discretionary space may be very hard to eradicate. Even those working at the “coal face” of practice have some degree of control over their transactions with offenders and on the distribution of resources, on a day to day basis. The existence of space, however small, gives practitioners the potential to resist the imperatives of a dominant discourse: providing a bulwark against transformative impulses.

### Conclusion

The research has shown that the penal system is plural in conception and dynamic in functioning. It is linked by policy networks and distinctive vocabularies which provide a resource bank which can be shaped and reworked by practitioners within the system. It is also characterised by a series of filters - cultural and structural - the particular configuration of which will determine the extent to which the symbolic discourse of the policy frame can be put into practice. The transformative potential of the system is thereby dependent on control over *both* discourse and practice. Such a hegemonic moment is likely to be difficult to both achieve and sustain given the manner in which power is exercised within the system.

This chapter has explored systemic relationships in the context of policy implementation. The next case study will explore systematicity at the level of the intermediate agencies in the system: the specific example being the decision-making practice of the Parole Board and systemic reproduction.

## **CHAPTER 5**

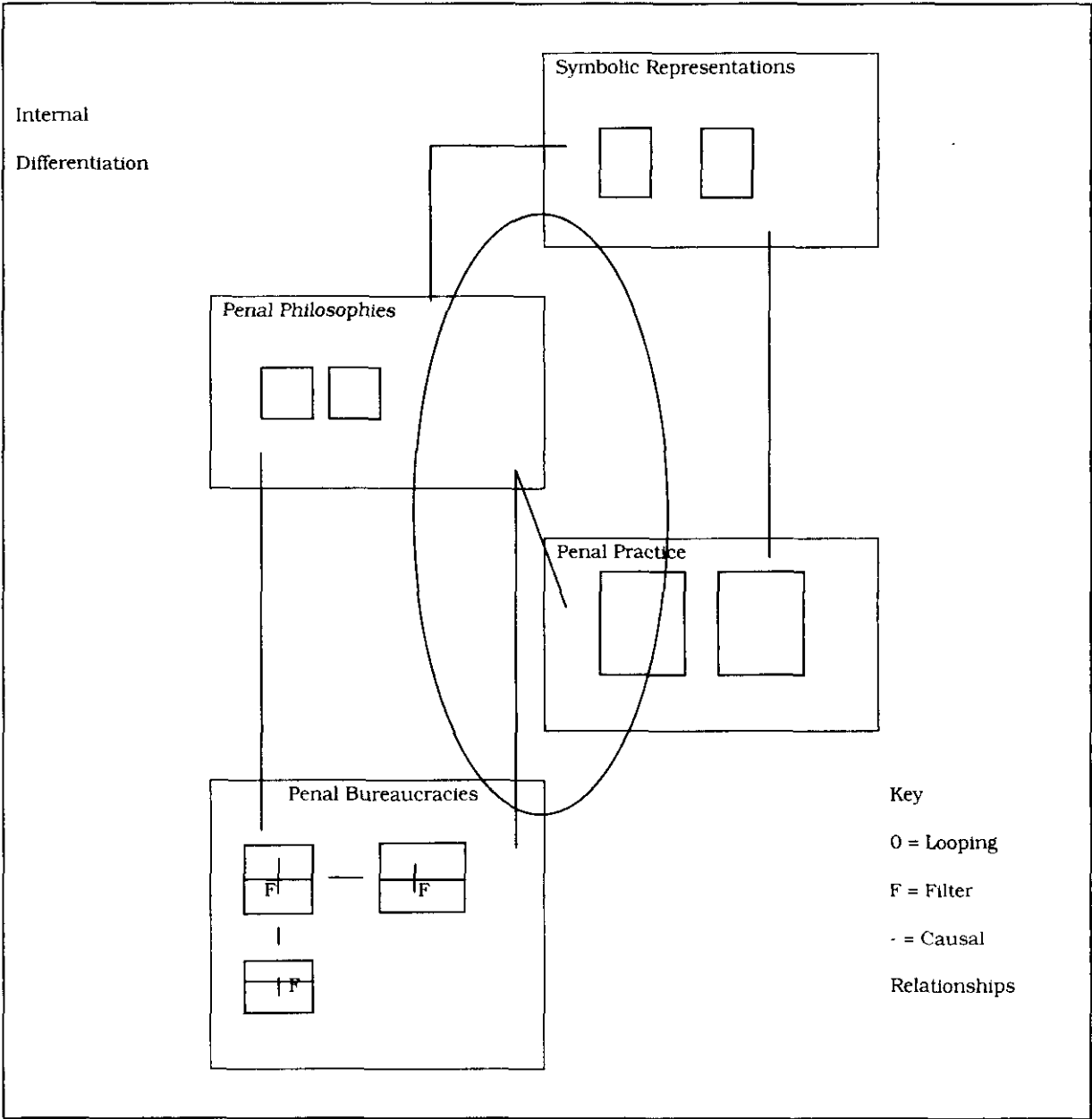
### **PAROLE BOARD DECISION-MAKING: CASE STUDY C**

#### **PART 1: THE REPRODUCTION OF MEANING**

##### Introduction

In the previous chapter I examined the cultural and structural filters which play a key role in shaping and reconstructing the symbolic discourse of the policy framework of parole (specifically the social work contribution to parole) as it becomes translated into operational practice. In this final case study I want to continue the exploration of operational practice, but this time in the context of Parole Board decision-making. The main focus of this case study is to be the dynamics of systemic reproduction, it will involve consideration of the following elements of the relational model of penalty (extracted from *Diagram 2.1* in chapter 2), in particular the dynamics of looping (as represented by the circle on the model) and inter-bureaucratic relationships (as represented by the linkages drawn within the box labelled "Penal Bureaucracies").

DIAGRAM 5.1: CASE STUDY C THE DYNAMICS OF SYSTEMIC REPRODUCTION



The case study is developed over the course of two chapters, each of which examines a different dimension of reproductive dynamics.

(i) Part 1: Themes

In this chapter I examine Parole Board decision-making using a framework derived principally from Jackson's model of legal decision-making (Jackson 1991, 1995).

The aim is to highlight the mechanisms leading to the creation and reproduction of meaning within particular sites in the penal system.

Jackson argues that adjudicators in the trial process work with a series of narrative frameworks or "system of signification", through which they are able to attribute meaning to, and evaluate the truth claims of, the testimonies put before them (Jackson 1991, 1995). I aim to demonstrate that such a system of signification underpins Parole Board decision-making. This system comprises both a series of inter-locking discourses (narratives), which frame the Board's understanding of particular cases, and a set of conventions which guide decision-making outcomes. It is derived from the customary practices of the Parole Board and sustained through the strong socialisation processes at work amongst Board members.

I am going to argue that both the derivation of the system of signification and its operational characteristics indicate that the Board has evolved a largely self-reflexive discursive practice. The effect of this is to produce a normatively closed "sub-system", the components of which are linked in a manner verging on hypercyclical coupling, characteristic (according to Teubner) of a fully autopoietic system (see Teubner 1993). This has enabled the Board to assert a high level of autonomy and resist some of the imperatives of the broader policy framework within which it is situated. As such, the Board's activities exemplify the looping process which, I have suggested, is one of the dominant features of penal dynamics (and which, as noted above, is represented by the circle in Diagram 5.1). It is through looping that meaning is systematically constructed and reproduced by the Board.

### *(ii) Part 2: Themes*

Part 2 of the case study (developed in chapter 6), is an examination of bureaucratic dynamics which set limits on Parole Board decision-making and which have the potential to inhibit the full flowering of the autopoietic dynamic described above.

I aim to demonstrate that the looping mechanisms, set out in Part 1, are ultimately constrained by the movement and activities of other bureaucracies in the penal system. These constraints function in a manner akin to the process of bureaucratic dynamics which Selznick refers to as the recalcitrant tendencies of bureaucracies (see Selznick 1966). As such, they serve to enmesh the Parole Board within the broader system: a feature of systematicity which I shall term "rooting" (represented by the linkages within the box labelled "Penal Bureaucracies" in Diagram 5.1). In the course of Part 2, I will show the ways in which rooting processes are characterised as much by negative relationality (that is breakdowns in, or absences of, relationships between agencies and agents that comprise the system) as by positive relationality (namely strong and/or efficient connections).

My overall argument in Case Study C will be that there is a dynamic tension between the rooted and looping (self-reflexive) aspects of Parole Board decision-making and that it is this very tension which provides the momentum for systemic reproduction. The case study will conclude with a consideration of the implications of this for the development of a model of systematicity and for an understanding of penal transformation.

### *(iii) Case Study C: Methods*

As was mentioned in chapter 1, the case study is based on: observation of six Parole Board meetings and analysis of all decisions made at those meetings (n=345, the observation sample<sup>42</sup>); analysis of a sample of dossiers from all cases discussed at those meetings from four study prison units (n=69, the dossier sample); and interviews with six members of the Parole Board. The use of both interview and

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<sup>42</sup> It should be noted that these 345 decisions relate to the cases of 311 individual prisoners/licencees. During the course of the fieldwork, a number of cases were referred to the Parole Board on more than one occasion: see Annex 1 for further details.

observation data enables a degree of triangulation. (Further details of the methods and characteristics of the samples are included in the thesis at Annex 1 and 2).

*(iv) Structure of Part 1*

As my point of departure in this chapter I am going to give a brief outline of: the powers of the Parole Board as set out in the legal and policy framework of parole; the guidance on decision-making offered by this framework; and the process of decision-making as observed during the fieldwork period. I will then give an exposition of Jackson's model of decision-making before exploring the ways in which this can be applied to the Board's practice. This will include an examination of both Parole Board perceptions of decision-making, as evidenced by the interview data, and the day to day practices of the Board, as evidenced by the observation and dossier data. The former highlights the narrative frameworks with which the Board operates and the latter the ways in which the broader system of signification operates in practice. I will conclude with a consideration of the derivation of the system of system of signification and its implications for systemic functioning.

The Legal and Policy Context of Decision-making

The Parole Board is an example of, may be termed, an intermediate institution in the penal system. It occupies an interstitial space bounded by the conceptual vocabularies of the policy sites which comprise the parole system (see chapter 3) and situated alongside the bureaucracies responsible for either implementing policy or servicing the day to day needs of the system (discussed in chapter 4). While the Board enjoys a high level of independence, its activities are, nonetheless, constrained by the legal framework which sets its terms of reference and by the checks and balances provided by Ministers and the Judiciary in certain types of case.

### *(i) The Legal Framework of Parole-Board Decision-making*

As was mentioned in chapter 1, the authority for parole in Scotland lies with the Prisons (Scotland ) Act 1989 and the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act). These Acts provide the terms of reference for the Parole Board, set out the extent of the Board's powers with regard to specific case categories and (in respect of the 1993 Act) enable the then Secretary of State (since the advent of devolution, Ministers in the Scottish Executive<sup>43</sup>) to set out matters which the Board should take into consideration when making decisions in individual cases.

The main types of case dealt with by the Parole Board are: determinate sentence (fixed term) prisoners referred for consideration of release on parole and non-parole licence cases (see below); indeterminate sentence prisoners referred for consideration of provisional release on life licence; and parole and life licencees referred for consideration of recall. The decision-making powers of the Board vary from complete control over certain types of these cases (in which the Board exercises a degree of what may be termed executive authority) to a more restricted, advisory capacity in other case categories.

### *Determinate Sentence Cases*

As a result of the arrangements introduced by the 1993 Act, the Parole Board has complete jurisdiction over the release of prisoners serving sentences of between 4 and 10 years<sup>44</sup> and the conditions of their licences.<sup>45</sup> For prisoners serving fixed term

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<sup>43</sup> As the research on which this thesis is based, was completed prior to the inception of the Scottish Parliament (1999), the executive authority in respect of parole and early release will be referred to as the Secretary of State. All of the former Secretary of State's powers with regard to parole and early release have now been devolved to Ministers in the Scottish Executive.

<sup>44</sup> Prior to the implementation of the 1993 Act, the Board were restricted to making recommendations on release and licence conditions to the Secretary of State. In practice the Secretary of State rarely did not agree to the recommendations. During the observation period it was clear that Board members thought strategically about the Secretary of State's likely response to their recommendations in certain difficult cases (of which there were very few: mainly sex offenders or offenders with a history of extreme violence) and would sometimes alter their recommendations to make them appear more "palatable" to him. One example was a case of violent offender serving a long term sentence. The Board wished to recommend release but believed that the Secretary of State was unlikely to agree to this. As a consequence a forward (conditional) release date was given (rather than immediate

sentences of over 10 years, the Board is limited to making recommendations to the Secretary of State on release and additional licence conditions. It is the Secretary of State who is empowered to take the decision whether or not to release the prisoner.

As mentioned in chapter 4, since the implementation of the 1993 Act, offenders serving long term sentences (of 4 years or over) and who are not granted parole prior to their two thirds of sentence date are now released *on licence* in the community until their end of sentence date: the so-called non-parole licence (previously such prisoners would have been released at their two-thirds of sentence date without any form of supervision). The Parole Board is able to recommend the attachment of additional requirements to the non-parole licence. Furthermore the Secretary of State is *required* to consult the Board where he or she intends to impose a non-standard condition in the supervision licence. As with determinate sentence cases of over 10 years, the Board's role in the non-parole licence decision is primarily advisory.

### *Life Sentence Cases*

There are two different types of life sentence case which come before the Board: mandatory life sentence cases (offenders convicted of murder)<sup>46</sup> and designated life sentence cases<sup>47</sup> (which include offenders convicted of other extremely serious violent or sexual offences). The Board has greater control over the release of designated life sentence cases than it does over mandatory life sentence cases. Under the Parole Board Scotland Rules 1993 (as amended 1995), once designated life sentence prisoners have served the relevant part of their sentence<sup>48</sup>, they are entitled to have

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parole) with a requirement that the prisoner undergo a range of counselling programmes both in prison and to be continued in the community on release.

<sup>45</sup> Each licence has a number of standard conditions. The Parole Board is empowered to add extra conditions onto these. Research suggests that additional requirements are generally included as a mechanism for managing risk (see McAra 1998b).

<sup>46</sup> The Parole Board also considers the cases of children who are being detained without limit of time under section 205 of the Criminal Procedure (Scotland) Act 1995.

<sup>47</sup> Formerly known as discretionary life sentence cases.

<sup>48</sup> The relevant part is the minimum period to be served in custody as designated by the trial court judge at the point of sentence.



their case referred to a discretionary life tribunal of the Board (which comprises 3 members of the Board including the judicial member). This tribunal has the power to direct the release of the prisoner as long as it is satisfied that continued incarceration is no longer necessary for the *protection* of the public. In mandatory life sentence cases, by contrast, the Board is restricted to the recommendation of a provisional release date and pre-release programme, with both the Secretary of State and the judiciary requiring to agree the timing and the programme.

### *Recall Cases*

In most cases referred for consideration of recall to custody, the Board is again limited to an advisory role in respect of changes in supervision arrangements and whether parole or life licencees should have their licences revoked. The one exception to this is where the Secretary of State has recalled a prisoner without first consulting the Board. Such cases (known as Secretary of State Recall Cases) must be referred to the next meeting of the Board, at which stage the Board has the power to direct immediate re-release.

### *Checks and Balances*

As the above suggests, while the Board has a high level of independence in certain types of case, its powers are delimited by both political and judicial control over mandatory life sentence cases and political control over very long term determinate sentence cases, the non-parole licence and most categories of recall case.

The tripartite structure in mandatory life sentence cases and the dyadic structure in the other types of case I've just mentioned, operate as a series of checks and balances within the system. For example although it would appear that there is a high level of political control over the release of mandatory life sentence cases, it is important to note that the Secretary of State cannot direct the release of such a prisoner without first receiving a positive recommendation from the Board and from

the judiciary so to do. The Secretary of State can, however, decide not to accept a positive recommendation from either.

As a further check within the system, the decisions of the Board can be subject to judicial review (that is in cases where they are disputed by the prisoner). This occurs very infrequently in Scotland, and in the three most recent cases, the courts have seen fit to uphold the decision of the Board reinforcing, thereby, the Board's decision-making practices (see *Rea v Parole Board for Scotland* 1993; *McRae v Parole Board for Scotland* 1997; *Holmes v. The Secretary of State for Scotland* 1997).

### Guidance on Decision-making

As well as setting out the powers of the Parole Board with respect to different case types, the legal and policy framework of parole also offers some guidance to the Board in respect of the factors which should take primacy in decision-making.

#### *(i) Parole Board Rules*

As was mentioned, the 1993 Act enables the Secretary of State to set out the criteria to be taken into account in Parole Board decision-making. In this regard there is some degree of political influence over the manner in which the Board exercises its discretionary powers (even in the categories of case over which the Board has executive authority). Parole Board (Scotland) Rules were drawn up in 1993 (and amended in 1995 and 1998<sup>49</sup>). The Rules are fairly broadly defined and currently include the following factors:

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<sup>49</sup> The Parole Board (Scotland) Amendment Rules 1998 make provision for the Parole Board not to disclose information it has obtained to the persons concerned. These provisions are the same as those in which the Secretary of State can decide not to disclose information (which he or she has sent to the Parole Board) to the person concerned, namely where disclosure would be likely to: affect adversely the health, welfare or safety of the person concerned or any other person; result in the commission of an offence; be likely to facilitate an escape or would be prejudicial to the safe-keeping of persons in custody; impede the prevention or detection of offences or the apprehension of suspected offenders; damage the public interest (The Parole Board for Scotland Annual Report 1998).

- The nature and circumstances of any offence of which that person has been convicted or found guilty by a court of law;
- The person's conduct since the date of his/her current sentence;
- The likelihood of that person committing any offence or causing harm to any other person if he/she were to be release on licence, remain on licence or be re-released as the case may be;
- What that person intends to do if he/she were to be released on licence or re-released on licence and the likelihood of his/her fulfilling those intention;
- Any written information or documents or written representations which the Secretary of State or the person concerned has sent to the Board or which the Board has otherwise obtained.

As can be seen, the Rules encompass criminal justice matters, actuarial calculations of risk and danger together with assessments of behaviour in custody and release plans. They suggest that the parole decision should be both backward-looking (in that the original offence and the prisoner's criminal history as well as time in custody become part of the calculation) and also forward-looking in orientation (in terms of likely risk and ability to follow through on release plans). Importantly, however, the rules do not give any indication as to the relative weight that should be accorded to either of these orientations: that is left to the discretion of the Board.

#### *(ii) The Policy Framework*

While the Parole Board Rules provide one framework for decision-making, the policies which impact on the parole process provide a number of others.

As indicated in chapter 3, the conceptual framework underpinning parole policy is highly complex. Each policy site (namely social work, prisons, parole and early release policy), mixes a range of competing rationales in different ways; the only degree of cohesion deriving from the continued commitment to rehabilitation and the increased use of the language of managerialism in each.

Social work policy lays emphasis on penal welfarism. It suggests that the prison is ineffective as a site for effecting rehabilitation and that community-based interventions should, as a consequence, be the focus for resources. Were the Board minded to take a social work perspective then the focus of decisions would be on what social workers could offer in the community to assist reintegration.

Prisons policy, by contrast, highlights the importance of facilitating change during time spent in custody and that the focus of resources should be the development and implementation of prisoner programmes geared to achieving this end. A prisons perspective in decision-making would focus primarily on progress in custody, with an expectation that behavioural change would be completed prior to release.

Parole and early release policy fluctuates between viewing parole as a mechanism for rehabilitation (which suggests that community interventions have a key role to play in completing the reintegrative process begun in prison) and as a mechanism for ensuring risk to the public is minimised (which requires social workers in the community to undertake a greater role in policing licencees' behaviour and suggests that work to effect behavioural change - and hence risk reduction - should be completed in the prison setting). This reflects the mix of forward and backward looking rationales to be found in the Parole Board (Scotland) Rules, described above, with decision-making bifurcated between assessments of future structures and progress in custody.

To summarise thus far, the space occupied by the Parole Board in the penal system is bounded by a legal framework which delimits its decision-making powers through the provision of a series of political and judicial checks and balances and a policy framework which sets out a variety (and indeed complex set) of rationales delineating the criteria to be considered in individual decisions.

Having set out the legal and policy framework of parole I now want to examine in more detail the decision-making practice of the Parole Board. The following sections of the chapter will begin with an overview of the process of decision-making as observed during the fieldwork period. I will then give a short exposition of the model of legal decision-making developed by Jackson before examining the ways in which this model can be applied to the decision-making practice of the Board.

### The Process of Decision-making

The Parole Board has to deal with a large number of cases at each meeting and the observer is initially struck by the speed with which business is conducted. During the fieldwork period the Board considered (on average) 58 cases per meeting, taking around 4 minutes to reach a decision on an individual case. The sheer volume of business in itself provides impetus for the Board to evolve efficient methods of decision-making. The Chair has a key role to play in this, by ensuring that deliberations on a case remain focused and by closing off discussion which becomes lengthy and unproductive.

#### *(i) Procedures*

Individual members of the Board are given responsibility for presenting a number of cases at each meeting. During the presentation of a case the nominated member will outline, what in their view, are the key features of the case and will make a recommendation on outcome (in most but not all cases). The full Board might then discuss the case and the presenting member's recommendation, although this does

not happen in every case. In disputed cases a decision will be reached by a majority vote, if no agreement is forthcoming after discussion. During the observation there was very little disagreement on cases. Even in disputed cases the final decision was generally unanimous. Only 18 (5%) of the 345 decisions made, went to a vote.

## *(ii) Information*

Parole Board members are given the dossiers and/or recall papers for all cases to be considered at each meeting and are expected to have read them prior to the meeting itself.<sup>50</sup> The nature of information in the dossiers and, to a lesser extent, recall papers, is a mixture of objective "facts" about the case (in respect of age, marital status, and official criminal history) and a range of assessments. While some of these assessments may be based on objective, measurable criteria, most rely on the judgement of the individual preparing the report. Indeed it is quite common for dossiers, in particular, to contain a number of contradictory accounts of the offender (as occurred in over 95% of the cases in my dossier sample). In making decisions the Parole Board, therefore, requires to weigh up and assess these competing perspectives.

Having outlined briefly the decision-making procedures of the Parole Board, I now want to set out the main elements of Jackson's narrative model of legal decision-making and highlight the ways in which this model helps illuminate Parole Board practice.

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<sup>50</sup> Interviewees confirmed that preparation for meetings was meticulous. All endeavoured to read and absorb what they described as the "prodigious" volume of information contained in the papers. Dossiers for cases referred for consideration of release on parole or life licence, can vary in length from around 5 pages to over 50 depending on how many times the case has been before the Board. For recall cases the papers are considerably shorter, consisting for the most part of an extract from the minutes of the Board, a police report (where applicable) and a report from the licensee's supervising officer. In Secretary of State recall cases (i.e. those referred for consideration of immediate re-release) the papers also contain a report of the interview with the prisoner conducted by a member of the Parole Board.

At the time at which fieldwork was undertaken, these papers were the only source of information which the Board had on a case. This has changed recently in the wake of arrangements introduced by the Prisoners and Criminal Proceedings (Scotland) Act 1993. Prisoners referred for consideration of release on licence are now interviewed by a member of the Parole Board and a report of the interview is included in the papers for the meeting, at which the case is to be considered.

### Narrative Models in Decision-making

As was mentioned, Jackson's work focuses on decision-making in the trial process, with most of the examples used to build up his model, relating specifically to the criminal trial (see Jackson, 1991 and 1995). The process of Parole Board decision-making, as described above, does of course differ in fundamental ways from the processes of fact construction and adjudication within a criminal trial. Rather than a series of testimonies being given to build up the prosecution or defence case, the Board has before it a set of information and a series of assessments of individual cases. The presenting member is required to sift through information to construct a case to set before the Board and the Board itself has to assess the merits of the presenting member's recommendation, in the light of its own reading of the information provided. Nonetheless I wish to argue that the same processes of pattern-matching and signification can be discerned within the practice of the Board, as Jackson claims operate in legal decision-making. In doing so I aim to develop Jackson's argument further to suggest that it is these very processes which lend Parole Board discourse its reflexive qualities.

#### *(i) Jackson's Model*

Jackson begins the development of his model with a critique of legal theories which characterise decision-making as a process of deduction (the normative syllogism whereby a general rule, the major premise, is applied to the facts of the case, the minor premise, where it has been determined that these facts are an "instance" of the facts that are mentioned or "subsumed" within the general rule, see for example the work of Jensen, 1957, MacCormick, 1978). Jackson argues that this deductive or syllogistic form does not fully capture the complexities of legal decision-making. This is because both the facts of the case and the rules to be applied have to be understood as *narrative* representations of human behaviour.

### *Narratives and Pattern-Matching*

Drawing on Bennet and Feldman's work<sup>51</sup>, Jackson contends that narratives have a key role to play in cultural communication. They provide individuals with a stock of knowledge or system of signification through which they are able both to attribute meaning to, and evaluate the truth claims of, a particular story or "set of facts" before them. The determination of facts in the trial process is predicated, therefore, on the extent to which *both* the substantive content and (by implication) the internal logic of the stories being unfolded (for example through the various testimonies given) have marked similarities to one or more of the series of narrative typifications of behaviour (or thematics), which inhere within the adjudicators' system of signification.<sup>52</sup> Legal decision-making is characterised thereby, as a process of pattern-matching and not (as per the normative syllogism described above) the application of deductive logic (Jackson 1991).

Jackson claims that systems of signification derive from the social and cultural experiences of particular groups and are, as a consequence, inherently contingent. At the same time, however, these systems also need to satisfy a number of general (indeed universal) conditions of what Jackson terms "sense construction" (Jackson 1995). Drawing on Greimasian semiotics<sup>53</sup>, Jackson contends that the sense of any discursive unit (including those units which comprise the thematics of any system of signification) is constructed from two complementary aspects of its deep structure:

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<sup>51</sup> Bennett and Feldman undertook research exploring the factors which led jurors in US criminal trials to accept the truth of facts put before them (see Bennet and Feldman 1981)

<sup>52</sup> An example given by Jackson is as follows: Yvonne Sleightholme was tried and convicted of the murder of the wife of her former lover. According to Jackson the facts of the case had to be interpreted by the jury in terms of one out of two stereotypical narratives: either the narrative typification of the spurned woman lover who kills her successor out of jealousy and then attempts to escape detection (the prosecution case), or the narrative of the victim of a frame-up by professional killers (the defence case) (see Jackson, 1995, pp164 - 165). Jackson claims that the prosecution case appeared more plausible, in part, because the facts of the case more closely resembled the stereotypical narrative of the spurned lover: a narrative with which we are more familiar, than we are with the narrative of the professional frame-up. Jackson also contends that the prosecution case gains plausibility because it had greater structural coherence than the defence case: the significance of structure is discussed later in this section.

<sup>53</sup> Greimas's research is based on re-analysis of Vladimir Propp's Russian folk-tales and the 31 narrative structures which Propp derived from them.



the syntagmatic and paradigmatic dimensions (or, in the terminology of semiotics, the syntagmatic and paradigmatic axes).

#### *(a) Syntagmatic Dimension of Discourse*

The syntagmatic or semio-narrative dimension comprises three elements: the contract (the setting of goals), the performance (the achievement of those goals) and recognition (the acknowledgement of achievement or non-achievement of the goals). This process involves a set of, what Greimas has termed, "actants": the subject-object; sender-receiver; and the helper-opponent. The sender will communicate a goal (the object) to a designated receiver (the subject) and may be assisted or hindered in the achievement or performance of this by a helper or opponent. The process concludes with an acknowledgement (recognition) between sender and receiver of what has occurred (see Jackson 1991 pp82).

For Jackson the deep structures of testimonies in the trial process require to match the linear progression along the syntagmatic axis, from contract through to performance and recognition. Where this progression does not inhere within a particular testimony it will cause confusion and, as a consequence, will lack plausibility.<sup>54</sup>

#### *(b) Paradigmatic Dimension of Discourse*

According to Jackson at each stage on this syntagmatic axis choices can be made between concepts. The choice is limited, however, to concepts which are "substitutionable" for each other.<sup>55</sup> Jackson contends that there are conventional "semiotic constraints" with regard to which concepts are in fact substitutionable,

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<sup>54</sup> Jackson also argues that the pragmatics of court room interactions (as for example between counsel and witness or counsel and judge) can be described in semiotic terms, as indicated in the following extract: "the witness is a subject invested with a goal of the activity of persuasion...the witness has been given that goal or contract by the party and/or his representatives. The performance is the action of testifying. Recognition is given in the judges summations or decision and/ or in the jury's verdict". (Jackson 1991 pp 85)

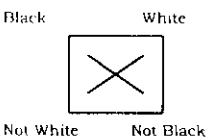
without significantly changing other elements in the syntagm.<sup>56</sup> Such constraints may “reflect” binary oppositions (in the form of the semiotic square<sup>57</sup>) or larger groups in relations of hyponymy.<sup>58</sup> It is these that form the paradigmatic dimension of discourse.

Binary oppositions and hyponymic relations build, by implication, into networks of conventional categorical associations (or indeed disassociations!) which guide meaning within a particular discursive unit. When such associations are manifest within a particular discourse (in Jackson’s case, the testimony within the trial) then its meaning becomes “intuitively clear”, where the associations become mixed in the wrong way or “reversed” then this again creates confusion (see Jackson 1991). Importantly these categorical associations can lead to a degree of conceptual closure, with binary oppositions or hyponymic groupings placing constraints, as noted above, on what can or cannot be included in a particular narrative, in order for it to make

<sup>55</sup> To illustrate this, Jackson cites Barthes example of a restaurant menu. The individual items within a particular section on the menu can be substituted one for the other (e.g. soup for melon) but items cannot be substituted between sections such as soup for pudding (see Jackson 1995, pp148).

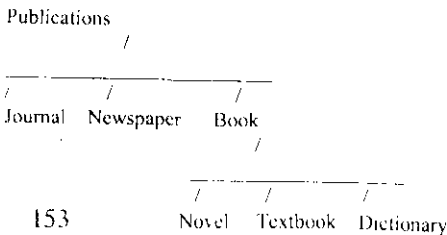
<sup>56</sup> The substitution of concepts can of course change the *meaning* of a particular narrative (e.g. through the substitution of guilty for innocent) but the deeper syntagmatic progression will still remain intact.

<sup>57</sup> In order to understand the semiotic square a distinction requires to be drawn between contradictories and contraries. Where two terms are contradictory then the assertion of one term entails the negation of the other; likewise the negation of one term entails the assertion of the other. The example Jackson gives is of the relationship between guilt and innocence: when someone is guilty they cannot be innocent, when someone is not guilty then they must be innocent. Where terms are in contrariety the assertion of one term entails the negation of the other but (in contrast to contradictory terms) the negation of one term does *not* entail the assertion of the other. The example of a contrariety given by Jackson is that of the relationship between black and white. If something is black it cannot be white, but if something is not black it is not necessarily white (Jackson 1995, pp149). According to Jackson in conventional language we often treat contraries as contradictions (thereby limiting choices); for example the conventional answer to the question what is opposite of black is often given as white. Treating contrariety as contradiction is represented in the form of the semiotic square:



The diagonal lines represent contradictions and the top of the square a contrariety. In the conventional understanding of black and white as a contradiction we go up the sides of the square. According to Jackson the semiotic square provides a framework within which sense relations gain meaning and serves to limit the generation of a larger number of possibilities that we can process at any time (see Jackson 1995, pp 150).

<sup>58</sup> Hyponymy can be illustrated by the following diagram cited in Jackson (1995, pp25): each item is potentially substitutionable for the other with the syntagm:



sense. It is this paradigmatic aspect of Jackson's model that I aim to show has particular salience for my analysis of Parole Board decision-making.

To summarise the different elements of Jackson's model: adjudicators work with a series of narrative frameworks (narrative typifications of behaviour) which comprise a system of signification; the frameworks function as a kind of touchstone against which the merits of any particular testimony, story or set of facts can be assessed. The truth claims of a testimony depend, therefore, not on their correspondence to some external objectifiable referent but rather on the degree of match between the deeper structures of their narrative frameworks (at the syntagmatic and paradigmatic levels as well as in respect of the thematics of the framework) and those of the testimony itself.

How then is this model of decision-making reflected in the practice of the Parole Board?

*(ii) Relationship between Narrativity and Parole Board Practice*

Both the interview and observation data suggest that the Board has developed its own system of signification derived, as was mentioned, from the customary practices of the Board and the strong socialising processes at work amongst Board members. This system comprises a series of interlocking narratives with respect to different case types, which shape the matrix of rules and principles with which the Board works. These discourses are themselves structured around a series of binary networks, as per the paradigmatic dimension of discourse described above (comprising the following dyads: high risk - low risk; dangerous - safe; poor progress - good progress; trustworthy - untrustworthy<sup>59</sup>). When reading information (contained in the dossier or recall papers), constructing presentations or discussing cases, it would appear that individual members are engaged in a process of

assessing the degree of correspondence between the characteristics of individual cases and the narrative typifications of behaviour as structured by the binary networks. The paradigmatic dimension of these narratives leads to a degree of conceptual closure. It is in this way the broader system of signification reinforces the autonomy of the Board and contributes to the looping processes which are a fundamental element of penal dynamics.

In the next section of the chapter I will explore both the narrative frameworks which comprise the Parole Board's system of signification, as evidenced by the interview data, and the ways in which narrative pattern-matching operates in practice, as evidenced by both the dossier sample and the observation data. The latter involves an exploration of the degree of match between presentations made by individual Parole Board members to the full Board and the information made available to them (in the form of the prisoners' dossiers), together with an exploration of the reasons given for outcome in the broader observation sample. For greater structural coherence I will deal with each of these data as they relate to specific case types, namely cases referred for consideration of release on (i) parole and (ii) life licence; (iii) cases referred for consideration of an adverse development<sup>60</sup>; and (iv) cases referred for consideration of recall to custody<sup>61</sup>.

### The System of Signification in Parole Board Practice

#### *(i) Parole Cases: The Risk Narrative*

Decision-making in parole cases is framed by what I have termed the risk narrative, based on shared conceptions (amongst Parole Board members) regarding key

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<sup>59</sup> Although some of these terms appear to be similar (e.g. risk and danger), the data suggest that the Parole Board does treat them as relatively distinctive concepts, as discussed in more detail below.

<sup>60</sup> During the observation 12 determinate and 10 indeterminate sentence cases were referred for an adverse development. This was where the prisoner had either been recommended for (provisional) release but had been given a misconduct report or had allegedly committed a further offence prior to release.

<sup>61</sup> All of the cases considered at the observed meetings were dealt with under the arrangements for parole which existed prior to the implementation of the 1993 Act. The observation sample therefore comprises some determinate sentence cases serving sentences of between 18 months and four years (88 or 43% of all determinate sentence cases considered by the Parole Board). Further details of the sample are given in Annex 1.

indicators of risk and narrative typifications of low and high risk behaviours. The dimensions of this narrative become evident on close analysis of the interview data.

#### *Perspectives on Parole: Interview Data*

All Parole Board interviewees stated that risk of re-offending was the main factor which the Board took into account in considering which prisoners were suitable for release on parole. In this respect the parole decision is, what one might term, an "actuarial calculation". It is clear from interviewee responses, however, that the Board is primarily concerned with *short-term* risk, that is the likelihood of re-offending during the period on licence only. The calculation of risk, therefore, includes consideration of the length of time available for the parole licence to run. (At the time at which the field work was conducted, licences would automatically come to an end at the two-thirds of sentence date.)

The basic consideration is, is he likely to re-offend again within the parole period.....This is the only risk assessment. Not will be offend again ever.....the length of the time available that's key. (Parole Board Member)

Interviewees indicated that they all made assessments of risk of re-offending in a similar way. Factors mentioned as indicators of risk were: the nature and circumstances of the current offence; the number and pattern of previous convictions; the extent to which the offender had addressed their offending behaviour (see below) and any underlying problems such as drug or alcohol misuse; the prisoner's general behaviour in custody (the focus here was on "bad" behaviour which was associated with heightened risk, especially where prisoners had been convicted of violent offences); the level of support the offender would have on release from family or other significant relationships; and plans for managing time in the

community in respect of employment, educational opportunities or constructive leisure activities.

Addressing offending was linked both to a change in the attitude on the part of the prisoner (through their acceptance of responsibility for the offence, by not minimising or underplaying their role in the offence or through expressions of remorse) and efforts made by the prisoner to address problems which were directly associated with offending.

It's whether or not they minimise the offence, whether they express genuine remorse. If the offence is linked to addiction problems whether they have addressed it. If there is evidence of change in the dossier.  
(Parole Board member)

#### *(a) Risk and Decision-making*

From the interview data, it would appear that the Board uses the indicators set out above to construct ideal-typical profiles of low and high risk cases. In Jacksonian terminology, these form the thematics of a narrative framework of risk. Decision-making becomes a process of matching the characteristics of individual parole cases to the thematics of one or other of these profiles. This process is a complex one given that cases do not always fit neatly into these profiles and the Board is therefore required to make fine judgements as to the relative weight which it should accord to any of the risk indicators.

Interviewee responses suggest that the Board systematically gives greater weighting to change in custody over all of the other risk indicators. There was consensus amongst interviewees that where prisoners had made little effort to address their offending during their time in custody, they were not likely to be recommended for parole. Level of risk had therefore to be reduced prior to release into the community,

rather than reduced or managed in a non-custodial setting through the provision of high quality community-based social work services.

No matter how good the release package they're not likely to get parole if the level of risk hasn't changed. In the dossier I'm looking for change in the level of risk. Even if the SCRO print-out goes to many pages but that person's managed to convince the authors of the various reports that I'm a changed person, I've refocused - I can live with that. If they haven't changed I'm fairly sceptical. (Parole Board Member)

The Board did, however, make some fine distinctions between certain case types as to the precise *nature* of the change required (in particular with regard to offenders convicted of Misuse of Drugs Act offences, non-sexual crimes of violence and sex offences).

For drug offenders, all interviewees distinguished between those involved with drugs *purely* for financial gain and those who were involved because they were addicts. There was consensus amongst interviewees that the key change required (and hence key indicator of risk) for dealers was the extent to which the offender had taken responsibility for their offending or shown remorse. For addicts the key indicator was successful participation in drug treatment programmes in prison.

With respect to those convicted of non-sexual crimes of violence (in addition to conduct in custody mentioned above), interviewees considered that the key indicator of risk was the extent to which the offender had made positive steps to address alcohol problems. This reflects a general concern of the Board regarding the relationship between alcohol use and violence (where an offender had been drinking at the time of the offence this was generally held to be indicative of an alcohol

problem. This is supported by the observation data where little differentiation was made between alcohol consumption per se, and alcohol addiction).

Finally in respect of sex offenders, interviewees were in agreement that this type of offender was always considered to be high risk because of the nature of the offence itself and the known patterns of sex offending (perceived to be late onset of offending, coupled with increasing severity). Key indicators of risk were associated with both efforts made in custody to address offending (where substantial progress had to be demonstrated) and circumstances in the community (in particular the degree to which supervision could enhance control of behaviour).

“Sex offenders are more difficult to assess. We need to look at both what they have done during their sentence and release plans. It’s very difficult given the general pattern of sex offending.” (Parole Board Member)

“(They) need to address offending, we need to know where they’re going to. If they’re going back to the same area and will be recognised, the risk is less than if they’re going to supported accommodation and no-one knows them. The pattern of offending is a problem, if there is no parole licence (control) they will start again.” (Parole Board Member)

Nonetheless, change in custody still retained primacy over circumstances in the community, with interviewees confirming that if the former had not been achieved then the latter was likely to have minimal impact on the Board’s decision.

#### *(b) On Balance Cases*

Interviewees highlighted only one exception to the general pattern of the need to provide evidence of change in custody. This was high risk prisoners who only had a short period of parole available before their two-thirds of sentence date. Interviewees



agreed that such prisoners might be recommended for parole in order to ensure that the prisoner was released into a controlled environment rather than being released at their two-thirds date with no controls at all.<sup>62</sup> Such prisoners were described by interviewees as "on balance" cases and were considered to be the most difficult type of case on which to take a decision.

For example a sex offender who's not addressed their offending behaviour. Do we keep him in to the last possible moment to protect the public or let him out in the last four months to some social work supervision? If we do the latter, at least we have a hold on him if only to know where he is, to indicate to him that there is a controlling element. We never come to that decision lightly. (Parole Board Member)

Interviewee responses suggest that the Board expects social work to fulfil a "policing" function under these circumstances, with rehabilitation or reintegration of the prisoner taking a secondary role.

"It's better to have some supervision to keep tracks on them than open the door and away they go. They might be high risk but it's the best way of controlling risk." (Parole Board Member)

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<sup>62</sup> A common view was, however, that the changes introduced by the Prisoners and Criminal Proceedings (Scotland) Act 1993 would reduce the number of high-risk cases released for short periods of parole. Under the arrangements introduced by this Act, prisoners serving four years or more and who do not get parole will be on licence from their two-thirds of sentence date (previously the date at which prisoners were automatically released without supervision) until the end of their sentence. Parole Board interviewees were of the view that the use of short periods of parole to control prisoners would be a less attractive option to the Board when members knew that the prisoners would automatically be on licence on release at their two-thirds date.

If they're high risk they'll be less likely to get parole. If we know that the person will be on licence from two-thirds until the end of sentence, they'll be a controlled risk... If they've not addressed their offending then frankly six months in the community would make little difference but six months more in prison, we know that they're not going to offend so let's keep him there. (Parole Board Member)

As was mentioned, the 1993 Act also enables the Board to insert additional requirement into the non-parole licence. Interviewees felt that such decision would be sharply focused around risk: in particular measures that social workers would require to put in place to enhance public safety. Rather than shifting the parameters of decision-making, the evidence suggests that the new Act will simply reinforce existing practice.

*(c) Signification of Risk*

Given the overriding focus on risk of re-offending, interviewees were asked why the degree of risk was not *explicitly* mentioned in all parole cases during the observed meetings (it was explicitly mentioned in 121 or 59% of all cases referred for consideration of release on parole). There was consensus amongst interviewees that Board members did not need to actually state the words “high or low risk of re-offending” because all Parole Board members understood that certain terms, words or concepts conveyed that meaning.

“Its like the one about the monastery. Because the monks know each other so well and are so familiar with each other's jokes they've given the jokes numbers. Someone says number 13 and they all fall about laughing. I don't need to say he has anger management problems and therefore is at high risk of re-offending: everyone knows that if he's got that problem he will be high risk.” (Parole Board Member)

This response provides further evidence for the existence of a shared system of signification: with particular terms signifying deeper meanings to those privy to the system, than they might otherwise convey to an outsider.

To conclude this section, the dominant thematics of the of the system of signification in parole cases, would appear to be based around the binary oppositions of high and low risk. These oppositions frame a number of conventions with respect to decision-making outcomes: with low risk cases and a small number of on-balance high risk cases receiving positive outcomes and other high risk cases negative outcomes.<sup>63</sup>

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<sup>63</sup> Somewhat ironically (given Jackson's critique of theorists who characterise legal decision-making as being inherently syllogistic in form), the application of the risk conventions is in many respects akin to a process of deduction: once it is determined that the facts of the case match the narrative framework of risk then the risk conventions are to be applied. Indeed I would submit that, despite his critique, Jackson's narrative model of decision-making is predicated on deductive logic at certain stages. Once it has been determined whether a set of testimonies do or do not make sense according to the narrative frameworks with which adjudicators work, there is then a further step to be taken: deducing from this innocence or guilt. Although the determination of guilt or innocence is in many respects immanent in the process of pattern-matching it is, nonetheless, deductive in form.

The key elements of the risk discourse are summarised in the following table.

**TABLE 5.1: SYSTEM OF SIGNIFICATION: THE THEMATICS OF THE RISK NARRATIVE**

NARRATIVE		KEY INDICATORS			DECISION-MAKING CONVENTIONS
RISK	PAROLE PROFILES	PAST BEHAVIOUR	CHANGE IN CUSTODY	FUTURE STRUCTURES	
		Response of Criminal Justice System	Services and Prisoner Responsibility	Services, relationships, prospects	
	High Risk	High number of previous convictions	Failure to address offending	Lack of support/poor relationships	Long period of Parole not released
		Increasing severity or persistence	Failure to address addictions	Unstructured time	Short period of Parole may be released
	Low Risk	Low number of previous convictions	Addressed offending	Supportive relationships	Released
			Addressed addictions	Structured time	

*Observed Practice*

Having set out the parameters of the risk discourse, I now want to explore how this was put into practice by the Board, firstly through an examination of presentations made by individual Board members as evidenced by the observation and dossier sample and secondly through an examination of decision-making outcomes as evidenced by the observation data alone. The former highlights the manner in which the binary oppositions of low and high risk structure individual member's understanding of parole cases, the latter the application of the risk conventions as set out in the table above.

*(a) Sample of Parole Cases*

During the observation the Board examined the cases of 204 prisoners referred for consideration of release on parole. Just under two-thirds of these had been convicted of non-sexual crimes of violence (122 or 60%) and were at first review for parole purposes. The dossiers of 38 of these cases were examined in more detail (these 38 cases represent 55% of the 69 cases in the dossier sample: further details of which can be found at Annex 2).

### *(b) The Construction of Cases: Presentations*

It would appear from the observation and dossier sample data that Parole Board members sift the parole dossier looking for evidence of low or high risk: information being read towards producing a profile, to be presented to the Board, corresponding to one of those which inhere within the thematics of the risk narrative. Where there are contradictory assessments in the dossier, members appear to assess the degree of match between different accounts, paying particular attention to the contents of a number of key reports, confirmed by interviewees to include the prison social work report, the note of circumstance and the prisoner's representation.<sup>64</sup> This becomes apparent on closer examination of the relationship between the main themes covered in the presentations and the themes of reports in parole dossiers.

### *(c) Presentations and Dossier Themes*

For brevity I have included only three examples in this section. These examples, however, are typical of the patterns of information usage in the other 35 parole cases in the dossier sample. Each of the tables below highlights the main themes covered in the parole dossier (first column); what these themes signify according to the thematics of the risk narrative (second column); and the elements of the dossier which the Parole Board member used in his or her presentation of the case to the Board (third column).

#### *(i) Decision 178*

The first example is that of a male, sex offender serving a short-term sentence and at first review for parole purposes.

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<sup>64</sup> One example, cited by interviewees, was the importance accorded to the degree of match between the prisoner's representation and the note of circumstance. This was considered to be a key indicator of risk (failure to admit to all elements of the offence included in the note of circumstance was taken to mean failure to address offending): "I look for correlation's between reports or disagreements which don't match. I'd look at the note of circumstance to get some indication of the offence and what was involved and see how that matches up with what other people's assessments are based on and what the prisoner is telling me. How close is his account, how much dodging of detail." (Parole Board Member)

## CASE 178

(Male, Sex Offender, Short-term Sentence)

Presenting Member recommends early review to assess progress once re-settled in prison unit which can offer sex offender counselling.

DOSSIER THEMES	INDICATION OF RISK LEVEL (High risk = HR Low risk = LR Not relevant to risk assessment = NR)	PRESENTATION (Mentioned = + Not mentioned = x)
<u>Comprehensive Report</u> Early History; Good behaviour; Alcohol problem; No counselling for alcohol addiction or offending behaviour.	NR LR HR HR	x x + +
<u>Police Report</u> Well known to police as habitual criminal and will return to crime	HR	x
<u>Prison Social Work Report</u> Background information on early history; No family support/socially isolated. Not fully accepted responsibility for offence and not undertaken counselling to address offending; Alcohol problems.	NR HR HR HR	x + + +
<u>Home Background Report</u> No family support. Needs sex and alcohol counselling which could be made available in community. Assessed by Tay project (community-based sex offender programme) as unsuitable at present time as not convinced of motivation to change.	HR HR HR	+ + +
<u>Report from Tay Project</u> Unsuitable at present: not motivated sufficiently to change and has significant alcohol problem.	HR	+
<u>Prisoner's Representation</u> Intention to address offending and alcohol problem.	LR potential but currently HR	+

As indicated in the table, most of the main themes in this dossier signify high risk, although the prisoner's stated intent to address his offending behaviour does indicate a potential shift to low risk status (were the behaviour in practice to be addressed). During the observation, the presenting member focused for the most part on the high risk aspects of the case, in particular the failure to address both the

alcohol problem and the offending behaviour. According to the risk rules this prisoner should not be recommended for release. The presenting member's recommendation reflects this but, in view of the prisoner's aspiration to address his problems, softens the decision by requesting an early review to assess progress.<sup>65</sup>

(ii) Decision 269

The second decision I want to focus on is that of a male prisoner convicted of dishonesty, serving a short term sentence at final review for parole purposes. This case has been chosen because it represents an on-balance case, described above.

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<sup>65</sup> An early review is where a case will be reviewed again by the Board before the case would normally come back to the Board were no parole to be recommended i.e. within one year.

CASE 269		
(Male, Dishonesty, Short-Term Sentence)		
Presenting Member recommends parole with condition of residential placement		
DOSSIER THEMES	INDICATION OF RISK LEVEL (High risk = HR Low risk = LR Not relevant to risk assessment = NR)	PRESENTATION (Mentioned = + Not mentioned = x)
<u>Comprehensive Report</u> Early History: Mixed Assessments: Good behaviour vs. Moans and Pestors Staff: Some use made of prison facilities: No remorse: No family support.	NR LR/NR NR HR HR	x x x x +
<u>Police Report</u> Well known to police as habitual criminal and will return to old crime. Ringleader.	HR HR	x x
<u>Prison Social Work Report</u> Background information on early history: No family support: Offending to feed drug habit: needs to address drug problem to stop offending in the future: Accepts sentence, remorseful and has insight into offence. Applied for residential placement at drug rehabilitation centre (Phoenix House).	NR HR HR LR LR potential	x x + + +
<u>Report from Phoenix House</u> Suitable for placement and placement available.	LR potential	+
<u>Prisoner's Representation</u> Intention to address drug problem realisation that without doing so will re offend.	LR potential	+

Again the majority of dossier themes in this case are indicative of high risk. However the prison social work report, the report from Phoenix House (a residential drug treatment centre) and the prisoner's representation all signify a low risk *potential*. The presenting member focused on the high risk aspects of the case but, recognising that this was the final review, considered that it was better for the

prisoner to be released to residential drug treatment rather than released at two-thirds of sentence date with no controls at all.

(iii) Decision 281

The final example is that of a male convicted of a non-sexual crime of violence, serving a long-term sentence at second review. This case has been chosen because it is one in which the importance of the prison social work report and the prisoner's representation is evident.<sup>66</sup>

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<sup>66</sup> It is important to note that while the Board always took careful note of the prisoner's representation this did not mean that they always believed what was written by the prisoner. As mentioned above, the representation was often used as a gauge of the prisoners veracity in respect of admitting responsibility for the offence. The observation data suggests that the Board was particularly sceptical of representations written by articulate middle class offenders. A halting, poorly spelt admission of responsibility was received more favourably than a highly grammatical treatise on how the offender had made efforts to change!



DECISION 281 (Male, Violent Offence, Long-term sentence) Presenting Member recommends parole with condition of continued alcohol counselling		
DOSSIER THEMES	INDICATION OF RISK LEVEL (High risk = HR Low risk = LR Not relevant = NR)	PRESENTATION (Mentioned = + Not mentioned = x)
<u>Comprehensive Report</u> Mixed reports: bad attitude to staff vs. No discipline problems Unsuccessful attempts made at anger management and alcohol counselling: Not changed attitude to offending and therefore not suitable for parole	HR/LR  HR  HR	x  x  x
<u>Police Report</u> A risk, will return to crime	HR	x
<u>Prison Social Work Report</u> Addressed offending Addressed alcohol problems Undertaken anger management Supportive home	LR LR LR LR	+ + + +
<u>Prisoner's Representation</u> Remorse expressed and explains reasons for "bad attitude" to staff (relates to a specific incident)	LR	+

As can be seen from the table, the prisoner received mixed dossier reports, with the information in the comprehensive report and police report signifying high risk and that of the prison social work and prisoner's representation signifying low risk. The presentation of the case focused on the assessments provided by the prison social worker and also mentioned the prisoner's representation. Both were used to indicate the prisoner was at low risk of re-offending and consequently should be recommended for parole.

### *Decision-making Outcomes*

Having looked at the ways in which the binary oppositions of low and high risk structure presentations, I now want to look in more detail at decision-making outcomes in parole cases.

As I aim to demonstrate the decision-making outcomes closely match the conventions as set out in the thematics of the risk narrative, described above. Cases assessed as being at a low risk of re-offending/with a low risk profile generally received positive outcomes (either recommended for release or given a forward release date<sup>67</sup>, the latter being warranted for example in cases where the prisoner required to begin or complete a period of counselling in custody). Cases assessed as being at high risk were either not recommended for release at current review or recommended for an early review decision (the latter was given in cases where the prisoner had indicated that they were motivated to change or were beginning to address their offending behaviour and/or personal problems). The observation data also include a small number of on balance cases which received positive outcomes despite their high risk profile.

The application of the risk conventions is most clearly illustrated by the reasons given for outcome. In the following sections I will examine reasons given for: (i) decisions not recommend parole at current review; (ii) early review decisions; and (iii) decisions either to recommend parole or a forward release date<sup>68</sup>.

#### *(a) Cases not Recommended for Parole*

Of the sample of 204 parole cases, 58 (28%) were not recommended for parole at current review. The reasons given for decisions are summarised in Table 5. 2.

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<sup>67</sup> A forward date is where the Board sets a release date later than the prisoners parole qualifying date, but earlier than the date at which the case, by statute, would come before the Board again (i.e. within one year). Release is usually conditional upon certain specified factors for example: the prisoner undertaking or completing counselling, or a forward date may be given to allow social workers in the community more time to set up services for the prisoner on release in the community.

**TABLE 5.2 DETERMINATE SENTENCE CASES NOT RECOMMENDED FOR RELEASE**

	REASON	Violent n=34 Percent	Sex n=9 Percent	MDA n=7 Percent	Other n=8 Percent	Total (N=58) Percent
PAST BEHAVIOUR	High No. Previous Convictions	26 (9)	22 (2)	29 (2)	-	22 (13)
	Poor Response to Previous Supervision	15 (5)	-	29 (2)	-	12 (7)
CHANGE IN CUSTODY	<b>High Risk/Not Addressed Offending</b>	<b>79 (27)</b>	<b>100 (9)</b>	<b>100 (7)</b>	<b>88 (7)</b>	<b>86 (50)</b>
	<b>Addiction Problems</b>	<b>44 (15)</b>	<b>56 (5)</b>	-	<b>25 (2)</b>	<b>38 (22)</b>
	Anger Management Problems	6 (2)	-	-		3 (2)
	Poor Conduct/Response to Testing	3 (1)	-	14 (1)	13 (1)	5 (3)
	Mental Health Problems	3 (1)	-	-		2 (1)
FUTURE STRUCTURE	Poor Family Support	3 (1)	50 (4)	14 (1)	13 (1)	12 (7)
	Poor Accommodation	15 (5)	-	-	-	7 (5)
	Services Not Set Up		22 (2)	-	-	3 (2)
	Poor Likely Response to Supervision	6 (2)		-	-	3 (2)
OTHER	Await Further Information	3 (1)		-	-	2 (1)

Percentages do not add up to 100 as more than one reason was given for some cases

Figures in brackets: numbers of prisoners

Shaded areas: most frequently mentioned reasons

Almost all of the factors given as reasons (as listed in the table) correspond to features of cases which according to the thematics of the Board's system of signification, correspond with heightened risk namely: a history of repeat offending; poor response to previous (and future) forms of social work supervision; failure to address problem behaviour during time spent in custody (such as anger management problems); and poor release environment.

As the table indicates, the *principal* reason given in most negative outcomes was that the prisoner had not addressed his or her offending behaviour and/or was at a high risk of re-offending (reason given in 50 or 86% of decisions). This reason was

<sup>68</sup> In 15 (7%) out of the 204 parole cases, the Parole Board decided to continue the case, generally for further information. These cases are not discussed in the following section

given in all sex offender and Misuse of Drugs Act cases and in a high proportion of negative outcomes on other offence types. Such prisoners were generally perceived to have failed to address offending and consequently at risk because their representations contained evidence of “minimising” or lack of remorse.

“No early review, but recommend move to prison with better facilities for sex offenders: minimises his involvement in the offence a risk to the community.” (Transcript: decision no.178, sex offence, short sentence, at first review.)

“Not remorseful, arrogant (in representation) risk of re-offending. Doesn’t like to be challenged.” (Transcript: decision no.51, violent offence, long sentence, at fourth review.)

“ (High number of ) previous convictions, failure to address offending behaviour: minimised his part in offence.” (Transcript: decision no.168, violent offence, short sentence, at first review.)

Risk of re-offending and /or failure to address offending was the *only* reason given for outcome in 19 cases. Where this factor was not explicitly mentioned, the reasons given *always included* failure to address addiction problems and/or a long criminal history, as in the following two examples:

“Not received any counselling for (addiction )problem. Needs support but not parole.” (Transcript: decision no. 26, violent offence, short sentence, at second review.)

“Terrible history previous convictions, fourteen of them, and has a drug problem. Needs to spend the rest of the time rectifying the drug problem.” (Transcript: decision no. 121, violent offence, long sentence, at first review.)

As can be seen, the predominant focus of all the above decisions was change in custody, with future structures and past behaviour being mentioned in only a minority of cases and always as supporting, rather than core reasons for outcome.

*(b) Early Review*

In 27 (13%) parole cases, the Board recommended an early review. Reasons given for early reviews are summarised in Table 5.3

**TABLE 5.3 DETERMINATE SENTENCE CASES: EARLY REVIEW**

CONTEXT	REASON	Violent n=16 Number	Sex n=4 Number	MDA n=3 Number	Other n=4 Number	Total (n=27) Percent*
PAST BEHAVIOUR	Low No. Previous Convictions/1st Custodial	2	-	-	-	7 (2)
	High No. Previous Convictions	1	-	2	1	15 (4)
	Poor Response to Previous Supervision	-	-	1	1	7 (2)
CHANGE IN CUSTODY	<b>High Risk/Not Addressed Offending</b>	<b>8</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>67 (18)</b>
	Mental Health Problems	2	-	-	-	7 (2)
	<b>Addiction Problems</b>	<b>6</b>	<b>1</b>	-	<b>3</b>	<b>37 (10)</b>
	Poor Conduct/Response to Testing	1	-	1	1	11 (3)
	<b>Motivation to Change</b>	<b>15</b>	-	-	-	<b>56 (15)</b>
	To Allow for Further Testing/Complete Training for freedom	4	-	-	-	15 (4)
	<b>To Complete Counselling/ Assess Progress</b>	<b>16</b>	<b>4</b>	<b>3</b>	<b>4</b>	<b>100 (27)</b>
FUTURE STRUCTURES	Good Family Support	-	1	-	-	4 (1)
	Poor Family Support	2	1	-	1	15 (4)
	Further Time to Clarify Plans (not linked to social work)	3	-	-	-	11 (3)
OTHER	Await Further Information	6	1	-	-	26 (7)

Percentages add up to more than 100 as more than one reason was given in most cases

\*Figures in brackets in final column: number of prisoners

Shaded areas: most frequently mentioned reasons

Again the key factors mentioned as reasons for outcome, are those which signify high risk, with the most frequently mentioned reasons for early review recommendations being: the prisoner was at a high risk of re-offending and had not addressed their offending behaviour (just over two thirds of decisions); and the prisoner had addiction problems either in respect of alcohol but more particularly drugs (just over one third of cases). In a number of these cases however the prisoners had made some efforts to tackle their problems by, for example, agreeing to undertake some form of counselling, or had indicated in other ways that they were now motivated to change and this was cited as the reason for an early review

(rather than a recommendation not to release) in just over half of the cases. In *all* cases the Board wished to monitor the prisoner's progress.

Attendance at a drug course in Perth may have caused him to rethink his drug involvement....6 months early review to allow for further testing and because he's not addressing his offending". (Transcript: decision no. 251, Misuse of Drugs Act offence, long sentence, at first review.)

"Needs counselling to address offending behaviour and been accepted for the STOP Programme. Reluctant to talk about offending. Six months review - needs to complete current counselling and allow us to see progress." (Transcript: decision no. 65, sex offence, short sentence, at first review.)

"Six months early review condition of alcohol counselling to see progress. Offending linked to drugs and alcohol. Previous convictions and poor home support." (Transcript: decision no.258, dishonesty, short sentence, at first review.)

As with decisions not to recommend parole, the primary focus of early review decisions was *change in custody*. Past behaviour and future structures were mentioned in only a minority of these decisions, again as supporting rather than core reasons.

### *(c) Positive Outcomes*

Of the 204 parole cases, 104 (51%) received a positive outcome. Prisoners in such cases were either recommended for parole on their due date, or given a forward (release) date. The reasons given for these outcomes is summarised in Table 5.4.

**TABLE 5.4: DETERMINATE SENTENCE CASES: POSITIVE OUTCOMES**

CONTEXT	REASON	Violent (n=66) Percent	Sex (n=8) Percent	MDA (n=22) Percent	Other (n=8) Percent	Total n= 104 Percent
PAST BEHAVIOUR	<b>Low No. Previous Convictions/1st Custodial</b>	<b>24 (16)</b>	<b>13 (1)</b>	<b>32 (7)</b>	<b>13 (1)</b>	<b>24 (25)</b>
	High No. Previous Convictions	-	-	5 (1)	25 (2)	3 (3)
	Good Response to Previous Supervision	5 (3)	-	5 (1)	-	4 (4)
CHANGE IN CUSTODY	<b>Addressed Offending/Low Risk</b>	<b>38 (25)</b>	<b>50 (4)</b>	<b>32 (7)</b>	<b>38 (3)</b>	<b>38 (39)</b>
	Not Addressed Offending/High Risk	11 (7)	25 (2)	9 (2)	38 (3)	13 (14)
	<b>Addressed Addictions/No Addiction Problems</b>	<b>24 (16)</b>	<b>38 (3)</b>	-	<b>25 (2)</b>	<b>20 (21)</b>
	Addiction Problems	2 (1)	25 (2)	-	-	3 (3)
	Addressed Anger Control Problems	5 (3)	-	-	-	3 (3)
	Not Addressed Anger Problems	2 (1)	-	-	-	1 (1)
	Good Conduct in Custody/Response to Testing	18 (12)	-	9 (2)	13 (1)	14 (15)
	Poor Conduct/Response to Testing	5 (3)	-	-	-	3 (3)
	Positive Change (Unspecified)	17 (11)	-	14 (3)	-	13 (14)
	Good Use of Facilities	12 (8)	-	18 (4)	-	12 (12)
	To Allow for Further Testing/Complete Training for Freedom	11 (7)	-	9 (2)	-	9 (9)
	To Allow Counselling to Begin/Complete	18 (12)	38 (3)	9 (2)	-	16 (17)
	Incentive to Change	6 (4)	-	-	-	4 (4)
	(Forward Date only)					
	(Forward Date only)					
FUTURE STRUCTURES	<b>Good Family Support</b>	<b>36 (24)</b>	<b>13 (1)</b>	<b>45 (10)</b>	<b>13 (1)</b>	<b>35 (36)</b>
	Poor Family Support	5 (3)	-	-	-	3 (3)
	<b>Good Employment Prospects</b>	<b>18 (12)</b>	-	<b>32 (7)</b>	<b>13 (1)</b>	<b>19 (20)</b>
	Specialist Resources Identified	15 (10)	63 (5)	9 (2)	13 (1)	17 (18)
	Good Accommodation Plans	2 (1)	-	-	-	1(1)
	Benefit from Supervision	17 (11)	38 (3)	5 (1)	13 (1)	15 (16)
	To Allow Time to Set up Services	9 (6)	-	-	-	6 (6)
	Good Release Plans (not linked to social work services)	5 (3)	-	-	-	3 (3)
	Public Protection	2 (1)	-	-	-	1 (1)
OTHER	Compassionate	2 (1)	-	-	-	1 (1)

Percentages add up to more than 100 in each column as more than one reason was given in most cases

Figures in brackets: number of prisoners

Shaded areas: most frequently mentioned reasons

From the table it can be seen that two factors were consistently mentioned as core



reasons for outcome namely: the prisoner had addressed his or her offending behaviour and was at a low risk of re-offending; and the prisoner had good family support (both mentioned in just over one third of all cases: 38% and 35% respectively). Other factors, mentioned in around one fifth of cases, were: the prisoner had a low number of previous convictions or it was his or her first custodial sentence; the prisoner had addressed his or her addiction problems; and the prisoner had good employment prospects. Again all of these features are those which according to the Parole Board's system of signification are associated with low risk.

"Supportive home background and address on release. Did not receive parole first time but now beginning addiction counselling and signs of progress." (Transcript: decision no.103, Misuse of Drugs Act offence, short sentence, at second review.)

"Six months Training for Freedom and then parole (i.e. six months forward date). Excellent custody reports, home leaves no problem. (Shows) remorse and (has a) supportive family." (Transcript: decision no.252 violent offence, long sentence, at second review.)

Although in the majority of cases the reasons for outcome were linked to positive features, the table nevertheless indicates that some cases with more negative features were recommended for parole or forward date (15 cases or 14% of positive outcomes). Examples include cases where the prisoner had a high number of previous convictions, had not addressed their offending behaviour or other significant problems or where the level of support from the prisoners family was assessed as being of poor quality. Almost of all these cases (14 out of 15) are examples of the Board's "on balance cases" at final review, where a short period of parole is recommended in an otherwise high risk case in order to provide some

mechanism for control.

"Release to supported accommodation when available: supervision is essential in the public interest, risk of re-offending." (Transcript: decision no. 264, sex offence, long sentence, at final review.)

"Two months forward date. Victoria house and (must) accept psychiatric treatment as organised by supervising officer. Benefit from supervision. (to) maximise societal protection." (Transcript: decisions no. 179, violent offence, mental health problems, short sentence, at final review.)

The one exception to this was the case of a violent offender, at second review who had 16 months available for parole. This prisoner was released because it was felt he would benefit from supervision, although the precise reasons as to why he would benefit from such a long period of parole was not specified by Board members.

#### *Parole Cases: Conclusions*

Analysed in terms of the model of decision-making developed by Jackson, the evidence suggests that the Parole Board is working with a narrative framework structured around the thematics of risk. Information is sifted for evidence of low or high risk and cases are assessed according to the degree of match between their dominant characteristics and the ideal typical profiles of high and low risk behaviour, which inhere within the Board's system of signification. Once agreement has been reached regarding the profile of the case before it, the Board applies the risk conventions: positive and negative outcomes being associated respectively with low and high risk profiles, save for the on balance high risk case in which a positive outcome is generally given.

### *(ii) Indeterminate Sentence Cases: The Progress Narrative*

Having explored decision-making in relation to parole cases I now want to focus on Parole Board practice with regard to indeterminate sentence cases (lifers) referred for consideration of release on life licence<sup>69</sup>. As I shall demonstrate, decision-making practice in lifer cases is framed by the thematics of progress based on shared conceptions of good and poor progress. Where cases match the narrative typification of good progress then they generally receive positive recommendations, the corollary being that those who match up to the characteristics of poor progress (as defined by the Board) receive negative outcomes. I will explore the dimensions of the progress narrative through discussion of the interview data, before highlighting the ways in which the narrative is applied in practice as evidenced by the observation data and dossier sample.

### *Perspectives on Lifers: Interview Data*

Interviewees were in agreement, that in making decisions on lifers, the Parole Board looked for a period of sustained progress in custody and made assessments of the extent to which prisoners had developed or changed. The dynamics of the lifer decision were in this respect entirely back-ward looking, to the period of time already served.

A period of improvement and stability, with most lifers it is possible to see this because of the length of time they get before they come to us. It is quite clear the changes that have been made from the daft drunken

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<sup>69</sup> During the fieldwork lifers were referred to the Board in two main ways: (i) for review, if the Board considered that prisoner had made sufficient progress then it would recommend that the case be returned (at a later meeting) as a formal referral (ii) for formal referral, subject to the Secretary of State's authority to consult the judiciary, the Board would consider the provisional release date and pre-release programme which had been developed by the Home Department. Where cases are re-referred to the Board in this way, release from custody may be at least a year away and conditional upon successful completion of the programme.

Since the fieldwork for the study was completed there have been a number of changes made to the powers of the Board vis a vis life sentence cases, in particular the Board now has greater control over the content of pre-release programmes. It is likely that this latter change will impact on the factors which the Board takes in to consideration perhaps giving the Board a more forward-looking perspective with respect to supports necessary to ensure reintegration into the community. There is some anecdotal evidence that this may be occurring but further research would be required in order to confirm this.

boy to the very mature person with an Open University Degree. (Parole Board Member)

Key measures of progress were identified as: response to testing for example in open conditions, on home-leaves, or on a work placement in the community; and progress in addressing addiction (or other significant) problems. With regard to testing, progress was measured by the extent to which the prisoner had demonstrated trustworthiness and responsibility with respect to increased levels of freedom. Indicators of this were the degree to which prisoners abided by the rules of open establishments and did not abuse the more relaxed conditions of their confinement; ability to keep to time schedules (turning up for work placements on time, returning to prison at designated times) and to adhere to agreed courses of action (for example travelling to and from work placements or home according to agreed routes and agreed timetables).

Although some of the measures of progress are similar to the risk indicators highlighted above (in particular the importance of demonstrating change in custody), when discussing lifers, interviewees did not associate these measures with levels of risk. Indeed interviewees believed that an assessment of risk of re-offending was inappropriate for most lifers, due to the "one-off" nature of the offence<sup>70</sup>.

"The normal criterion of risk is less appropriate. Lifers are some of the least dangerous people. I worry less about them than I do about sex offenders." (Parole Board Member)

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<sup>70</sup> It is unlikely that the Board's perception of mandatory life sentence cases would match its perception of designated life sentence cases. In the case of the latter, risk assessments are an important aspect of decisions to direct release, once the offender has served the relevant part of their sentence (see Parole Board Annual Report 1997).

Interviewees did, however, comment that when deliberating on indeterminate sentence cases they required to balance their own perceptions of the case with what they considered the public's view of life sentence prisoners to be (namely that these prisoners were highly dangerous and required close control on release). Some consideration was given, therefore, to the public's perception of the nature and circumstances of the offence (as interpreted by the Board) when deciding whether a lifer case was suitable for release.

As with determinate sentence cases, it would appear that the Board constructs ideal typical profiles of lifers, against which it assesses individual cases. These profiles, however, are structured around conceptions of good and poor progress (rather than risk as in parole cases). The data suggest that the lifer decision, in this regard, is based around the principle of reward. Where prisoners demonstrate good progress then they receive positive outcomes. Depending on the stage in sentence this might be: (i) a recommendation that the case be returned to the board at next review with a provisional release programme and provisional release date (as a formal referral); or (ii) a recommendation approving the provisional release programme and date as set before the Board. Poor progress results in negative outcomes, meaning that the prisoner would remain in custody for a further year before their case was reviewed again by the Parole Board. The key thematics of the system of signification as it relates to lifer cases are summarised in the table below.

**TABLE 5.5 SYSTEM OF SIGNIFICATION: THE THEMATICS OF THE PROGRESS**

**NARRATIVE**

PROGRESS	LIFER PROFILES	RESPONSE TO TESTING	CHANGE IN CUSTODY	PROGRESS CONVENTIONS
(Reward)		Home Leaves, Work Placement, Open Condition, Prisoner responsibility	Services and prisoner responsibility	
	Poor Progress	Untrustworthy; breaks rules; poor time management	Failure to address addictions or other significant problems	Negative Outcomes
	Good Progress	Trustworthy; keeps rules; good time management	Addressed addictions or other significant problems	Positive Outcomes (Dependent on stage in sentence)

Having set out the thematics of the progress discourse I now want to examine how this was put into practice by the Parole Board.

*Observed Practice: Lifer Cases*

During the observation the Parole Board considered the cases of 27 lifers referred for consideration of release on licence. Most of the lifers in the sample had served between 9 and 15 years in custody and were at their third or later review by the Board. (Further details of the lifer sample can be found in Annex 2).

*(a) The Construction of Cases: Presentations*

The presentations of lifer cases again provide evidence that members of the Board sift information towards making an assessment, this time with respect to progress. This is highlighted by the examples set out in the tables below, comparing the main themes set out in various reports in the dossier sample (of which 27, or 39%, were lifer cases referred for consideration of release on licence), with the features of the case mentioned during the presentations. As most of the lifer cases which came before the Board had been reviewed on several previous occasions, their dossiers were extremely long, with a full set of reports included for each review. The presentations of these cases, by contrast, tended to be very short with Board

members focusing on only one or two aspects of the multitude of information available.

(i) Decision No. 195

The first example, that of a male lifer at fifth review, has been chosen as it represents a typical presentation resulting in a negative recommendation.

## CASE 195

Male Lifer at Fifth Review

*Presenting Member Recommends Review in One Year*

DOSSIER THEMES	INDICATION OF LEVEL OF PROGRESS (Poor Progress = PP Good Progress = GP Not relevant to progress assessment = NR)	PRESENTATION (Mentioned = + Not mentioned = x)
<u>Departmental Assessment (current review)</u> Not addressed alcohol addiction.	PP	+
<u>Comprehensive Reports (1-5)</u> Early History; Nature and circumstances of offence; Family support initially poor now improving; Employment prospects initially poor now improving (job offer); Poor behaviour initially, escape attempt in early sentence, improved after third review and moved to open conditions, returned to closed after incident (returning drunk from placement); Now undertaking vocational training.	NR NR NR NR PP GP potential	x x x x + x
<u>Prison Social Work Report (1-5)</u> Needs to address alcohol problem, not taking responsibility for it himself; Home circumstances increasingly more settled; Employment prospects now good	PP NR NR	+ x x
<u>Home Background Reports (1-5)</u> Accommodation assessed as suitable at each review; Alcohol and psychological counselling now available in community.	NR NR	x x
<u>Prisoners Representations (1-5)</u> Continued expressions of remorse for crime. Recent commitment expressed to address alcohol problem.	NR GP potential	x x
<u>Governors' Reports</u> All focus on disruptive aspects of the prisoner's behaviour.	PP	x
<u>Psychiatric Reports (1-5)</u> No evidence of psychiatric problems.	NR	x



What is particularly striking from this first example is how much of the information within the dossier appears superfluous for the purpose of making an assessment of progress according to the Board's system of signification. Of the dossier themes which were relevant, almost all signified poor progress. The presenting member focused on just two: the prisoner's return to closed conditions (as a consequence of returning from a work placement under the influence of alcohol) and the failure to address alcohol problems. As a result of the poor progress assessment, the recommendation was for a review in one year.

(ii) Decision 185

The second example is that of a positive recommendation given to a male lifer at second review.

## CASE 185

Male Lifer at Second Review

Presenting Member Recommends Pre-Release Programme

DOSSIER THEMES	INDICATION OF LEVEL OF PROGRESS  (Poor Progress = PP  Good Progress = GP  Not relevant to progress assessment = NR)	PRESENTATION  (Mentioned = +  Not mentioned = x)
<u>Departmental Assessment (current review)</u>  Recommends programme.	GP	+
<u>Comprehensive Reports (1-2)</u>  Early History;  Nature and circumstances of offence;  Family support always good;  Employment prospects always good;  Poor behaviour initially but now good;  Now addressed alcohol problem through addiction counselling;  Good use made of sentence: undertaken educational programmes and vocational training.	NR  NR  NR  NR  GP  GP  GP	x  x  x  x  +  +  +
<u>Prison Social Work Reports (1-2)</u>  Addressed alcohol problem;  Home circumstances settled;  Employment prospects good.	GP  NR  NR	+  x  x
<u>Home Background Reports (1-2)</u>  Accommodation assessed as suitable at each review;  Job offer.	NR  NR	x  x
<u>Prisoners' Representations (1-2)</u>  Expression of remorse for crime.	NR	x
<u>Governors' Reports (1-2)</u>  Now good behaviour and good use made of facilities.	GP	+
<u>Psychiatric Reports (1-2)</u>  No evidence of psychiatric problems.	NR	x

The dossier themes generally signify good progress, with the prisoner having addressed his alcohol problem and made good use of his sentence. The presenting member recommended that the Board accept the pre-release programme as set out

in the departmental papers with the condition of six months in open conditions and six months on a training for freedom programme.

(iii) Decision 2

The final example is that of a male lifer at first review. This case has been selected because it demonstrates once more the importance accorded to the prison social work report in decision-making, particularly in a case where the main themes in the dossier contain mixed messages regarding the level of progress made by the prisoner.

CASE 2

Male Lifer at First Review: Presenting Member Recommends Review In One Year

DOSSIER THEMES	INDICATION OF LEVEL OF PROGRESS (Poor Progress = PP Good Progress = GP Not relevant to progress assessment = NR)	PRESENTATION (Mentioned = + Not mentioned = x)
<u>Note of Circumstances</u> Nature and circumstances of offence.	NR	x
<u>Trial Judge</u> Psychopath and at risk when under influence of alcohol.	PP	+
<u>Comprehensive Report</u> Early History; Nature and circumstances of offence; Family support good; History of employment but no current prospects; Mixed custody reports: poor vs. good behaviour; Hobbies mentioned; Good use made educational programmes. Needs further testing.	NR NR NR NR PP/GP NR GP PP	x x x x x x + +
<u>Prison Social Work Report</u> Family background; Circumstances and attitude to offence; Alcohol problem has started alcohol counselling. Heavy use made of educational programmes and prison facilities but worked against progress in coming to terms with the offence; Release plans; Good progress but too early for release;	NR NR GP GP/PP NR GP	x x x + x +
<u>Prisoners' Representation</u> Expression of remorse for crime; Good use of educational facilities; Description of hobbies; Supportive family; Commitment to address alcohol problem.	NR GP NR NR GP potential	x + x x x
<u>Governors' Reports</u> Immature and not ready for release. (Continued over page)	PP	x

CASE 2 (continued)		
<u>Preliminary Review Committee</u>		
Nature and circumstances of offence:	NR	x
Attitude to offence: remorseful:	NR	x
Attitude to sentence: responding well:	GP	+
Improved behaviour:	GP	x
Use of educational facilities:	GP	+
Good family support:	NR	x
<u>Psychiatric Reports</u>		
Initial report (prepared for trial) suggested aspects of behaviour warranted further investigation, second and third reports (undertaken for preliminary review committee and current review) state no evidence of psychiatric problems nor psychopathic personality problems.	GP	+

As indicated in the table some dossier themes suggest good progress (as for example recent psychiatric reports) whilst other information is more equivocal. The presenting member used themes highlighted in column 3 to construct the case as one where the prisoner may superficially be seen as having made good progress (in respect of use of prison facilities and mental health problems) but that this was at the cost of progress in coming to terms with the offence. The latter assessment was drawn directly from the prison social work report. The recommendation was review in one year and that the prisoner should be given a move to open conditions for further testing.

*(b) Outcomes*

As I have attempted to demonstrate, the binary opposition of poor and good progress structures the presentation of lifer cases. I now want to explore the ways in which the progress conventions impact on decision-making outcomes. Again I shall focus on reasons given for outcome.

During the observation almost two-thirds of lifer cases received a positive outcome, with 10 (37%) being recommended for a programme and six (22%) for a formal

referral at next review. The reasons for all outcomes are summarised in the following table.

TABLE 5.6 LIFERS: REASONS FOR OUTCOME

Reason	Programme Number (n=10)	Formal Referral Number (n=6)	Review In One Year Number (n=11)
Good Progress	9	3	2
Poor Conduct/Response to testing	-	-	4
Addressed Alcohol Problem	2	-	4
Addressed Mental Health Problems	1	-	-
Mental Health Problems	-	-	2
Not Addressed Offending	-	-	1
Incentive to Progress	-	2	-
Further Progress Required	-	-	4
Requirements of Justice Met	-	1	-

Numbers in some columns exceed total number of decisions as more than one reason for outcome was given

As indicated in the table, progress in custody was the principal reason given for decisions made to endorse programmes and to request formal referrals at next review. By contrast the main reasons given in cases not recommended for provisional release at current review were: poor conduct in custody, poor response to testing and failure to address addiction or other problems.

“Poor conduct, moody and lazy; not great advances made. Needs to address aggression and mood swings. Review in a year.” (Transcript: decision no.190, lifer at second review.)

“Depressing, getting worse. Needs professional psychological help. Review in a year.” (Transcript: decision no. 1, lifer at fifth review.)

In a further two cases, although the prisoner had made good progress, they were, in the view of the Board, at too early a stage in their sentence for release to be considered. These prisoners were still in closed conditions and required further testing in less secure settings (such as in open conditions or work placements).

### *Lifer Cases: Conclusions*

Decision-making in relation to lifer cases is conducted using the thematics of the progress narrative. At a paradigmatic level this narrative is structured around the binary *oppositions of good and poor progress* - with individual members of the Board reading the information in the dossier towards making this type of assessment. Where the prisoner has demonstrated *substantial* progress then the decision-making outcome is likely to be positive (except in cases where the prisoner is at too early a stage in sentence for release to be a viable option). Poor progress results in decisions to review in one year.

Having examined decision-making in relationship to lifer cases referred for consideration of provisional release, I now want to turn to the thematics of decisions relating to both lifer and parole cases referred for consideration of an adverse development.

### *(iii) Adverse Developments: The Trust Narrative*

As was mentioned, adverse developments are cases where the prisoner has previously been recommended for parole, forward release date or a pre-release programme but has been given a misconduct report, has allegedly committed a further offence prior to their (provisional) release date, or failed to comply with any conditions attached to provisional release decisions. It would appear, from close analysis of the interview and observation data, that the Board may be adopting a further narrative form within its system of signification: the thematics of trust.

*Perspectives on Adverse Developments: Interview Data*

During interview, Parole Board members were careful to distinguish adverse developments from other (what they termed) “normal” parole and life licence referrals. Almost all prisoners referred for an adverse development were perceived to have breached the trust placed in them by the Board and as a consequence Board members adopted a fairly punitive stance towards them.

“Well of course if they are given a decision to let them out and then they muck it up through ill-discipline or such like, then we can't trust them. A lifer, say, who is on a pre-release programme and returns drunk from an outside placement, we can't place trust in someone like that. We give them a chance and they blow it. It makes me angry. They deserve all they get.” (Parole Board Member)

From interviewee responses it would appear that the Board operates a sliding scale with respect to trustworthiness. Examples given of gross abuses of trust were where the prisoner had smuggled drugs into custody, had committed further offences while awaiting release or had failed to complete programmes as had been directed by the Board. Interviewees confirmed that such gross abuses of trust were likely to result in withdrawal of release dates. In more minor breaches of trust, such as small infractions of prison rules the Board would defer the release date for a short period. (Such deferrals were often proportionate to the length of punishment given by the Governor for the infraction: as interviewees put it “to reinforce the seriousness of the punishment”). In the case of very minor transgressions of prison rules, where prisoners had been of good behaviour and had generally complied with the Board's pre-release requirements, the Board would allow the date to stand. As one interviewee commented, “they've shown a sufficient amount of trust”. The thematics of the trust discourse are summarised in the following table.



TABLE 5.7 SYSTEM OF SIGNIFICATION: THE THEMATICS OF THE TRUST NARRATIVE

TRUST	TRUST PROFILES	BEHAVIOUR	TRUST CONVENTIONS
(Just deserts)			
	UNTRUSTWORTHY	Failure to complete counselling programmes or to address problem behaviour  Committing further offences  Serious breach of other prison rules	Proportionate to seriousness  Withdrawal or deferral of dates
	TRUSTWORTHY	Very minor breaches of prison rules in the context of generally good behaviour  Completing counselling programmes or addressing problem behaviour	Allow date to stand

Having set out the thematics of the trust narrative, I now want to explore how this impacted on the observed decision-making patterns.

*Observed Practice*

During the observation period the Board considered the cases of 22 prisoners referred for consideration of an adverse development (10 lifers undertaking pre-release programmes and 12 parole cases previously recommended for a forward release date). The papers given to the Board for these cases comprised the parole or life licence dossier together with a note of the circumstances of the adverse development, the prisoner's representations and, in some cases, up-dated reports from prison staff or social work giving an assessment of general behaviour and progress. (Where up-dated reports were not included with the papers this generally resulted in the case being continued, that is the decision would be postponed to a later meeting, in order to allow time for these reports to be prepared.)

*(a) The Construction of Adverse Development Cases: Presentations*

The evidence suggests that Parole Board members sift the information in the up-dated reports towards making an assessment of trust. This becomes clear when the themes in the up-dated reports from the dossier sample<sup>71</sup> are examined in relation to the presentation of the case during the observation. All of the adverse developments in the dossier sample were similar in character (involving alcohol misuse) and each resulted in a negative recommendation from the presenting member, as typified in the following two examples.

*(i) Decision No. 102*

The first example is of a lifer who returned late from Christmas home leave under the influence of alcohol.

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<sup>71</sup> Four cases in the dossier sample were referred for consideration of an adverse development all of them were lifers who were currently undertaking a pre-release programme. See Annex 2 for further details of these cases.

DECISION No. 102

LIFER

Presenting Member Recommends Withdrawal of Provisional Release Date

DOSSIER THEMES	TRUST DISCOURSE (Trustworthy = Y Untrustworthy = UT Not relevant to assessment of trust = NR)	PRESENTATION THEMES (Mentioned = + Not mentioned = x)
<u>Departmental Note of Adverse Development</u>  Nature and Circumstances of original offence;  History of 2 previous adverse developments: (i) returned from work placement with "illegal substance" for which earlier provisional release date deferred for 3 months; and (ii) absconded on home leave for which earlier provisional release date withdraw;  Note of most recent decision to allow prisoner to undertake pre-release programme;  Description of current adverse development:.	NR  UT    NR    UT	x  +    x    +
<u>Prisoner's Representation for Adverse Development</u>  Denies that had been drinking; requested urine test to prove innocence but refused on grounds that too expensive.  Had been in bed with throat infection.	T (potential)	+
<u>Full Dossier for All Previous Referrals</u>  Early poor behaviour becoming better at later reviews;  Good family support now in the community;  No evidence of psychiatric problems.  Prisoners representations at earlier review indicative of remorse for offence.	NR  NR  NR  NR	x  x  x  x

As can be seen from the table, most of the information provided to the Board, was not wholly relevant for the purposes of assessing degree of trustworthiness. Of the three themes in the information that were relevant, two indicated untrustworthiness (the nature of the adverse development and the history of two previous adverse

developments). The other relevant theme was the prisoner's representation, challenging the Departments account of the incident, which is put down as (potentially) a signifier of trust, were the prisoner proved to be correct. The presenting member focused on these three themes but highlighted the prisoner's failure to admit to the adverse development as reinforcing his untrustworthiness. The recommendation was for the withdrawal of the provisional release date.

(ii) Decision No. 198

The second example is that of a male lifer undertaking a pre-release programme. He was referred to the Board because he had returned from a work placement under the influence of alcohol.

DECISION No. 198

LIFER

Presenting Member Recommends Withdrawal of Provisional Release Date

DOSSIER THEMES	TRUST DISCOURSE (Trustworthy = Y Untrustworthy = UT Not relevant to assessment of trust = NR)	PRESENTATION THEMES (Mentioned = + Not mentioned = x)
<u>Departmental Note of Adverse Development</u> Nature and circumstances of original offence; Note of most recent decision to allow prisoner to undertake pre-release programme; Description of current adverse development.	NR  NR  UT	x  x  +
<u>Prisoner's Representation for Adverse Development</u> Admits had been drinking for 14 hours; States intention to address alcohol problem.	UT  NR	x  x
<u>Full Dossier for All Previous Referrals</u> Early poor behaviour becoming better at later reviews; Alcohol counselling begun by 5 <sup>th</sup> review; Good family support now in the community; No evidence of psychiatric problems; Prisoners representations at earlier review Indicative of remorse for offence and by 5 <sup>th</sup> review accepting need for alcohol counselling.	NR  NR NR NR NR	x  x x x x

Again the table indicates that much of the information provided to the Board is redundant for the purposes of the specific assessment being made by the presenting member. Of particular note here is the lack of relevance of the prisoner's statement (in his representation regarding the adverse development) that he intends to address his alcohol problems. While this would be of crucial importance to assessments of risk or progress in the types of referral discussed above, it is less so with respect to the narrative of trust. Of the relevant themes (contained in both the note from the department and other elements of the prisoner's representation), both

signify untrustworthiness. The presenting member focused the presentation around the Department's version of events and recommended withdrawal of the provisional release date.

*(b) Outcomes*

How then do the thematics of trust impact on decision-making outcomes. In order to illustrate this I will focus again on reasons given for outcome, as summarised in the following table.

**TABLE 5.8 ADVERSE DEVELOPMENTS: OUTCOMES**

	Withdraw Date (n=10) (Number)	Defer Date (n=2) (Number)	Retain Date (n=4) (Number)	Continuation (n=6) (Number)
Failed to return from home leaves or placement on time; or returned under influence of alcohol	8	-	-	2
Committed further offence in custody	-	-	-	4
Returned to closed conditions	8	-	-	4
Failed to complete specified counselling/programme	6	-	-	-
Good progress on counselling or programme	-	-	4	-
Serious infraction of prison rules	2	-	-	-
Minor infraction of prison rules	-	2	4	-
Await prisoner's representation or other reports on adverse development	-	-	-	3
Await outcome of trial	-	-	-	4

Numbers in some columns exceed total numbers of cases as more than one reason was given in certain decisions

The reasons given for outcome suggest that the main principle governing decision-making in adverse developments was just deserts, with outcomes being

proportionate to the degree of trust breached. As can be seen from the table, those assessed as grossly abusing trust, according to the thematics of trust discourse, had their dates withdrawn: eight of these cases had breached trust on either home-leaves or work placements and two had committed what were perceived as major infractions of prison rules. For six of these cases a supplementary reason was that they had failed to complete a counselling programme (which the Board had specified should be undertaken prior to release).

"Had an unauthorised article - glue, seven days loss of remission; serious misconduct. Also he's not addressed drug problem. Withdraw date."  
(Transcript: decision no.231, parole case.)

The Board generally allowed dates to stand where the breach had been very minor (the Board appeared to define "minor" by the nature of punishment meted out by the prison Governor), a supplementary reason being that the infraction had occurred in the context of otherwise good progress.

"Minor incident - placed on report for trying to change destination on travel warrant. Governor admonished him. He's doing well on alcohol counselling. Date to stand" (Transcript: decision no. 230, parole case)

In between these extremes were a number of cases where the Board deferred dates: the length of deferral matching the length of punishment given by the governor.

"Had a suspicious substance in cell but no confirmation of what it was. No evidence that it was definitely drugs. Governor gave him 7 days loss of privileges. We will delay the parole date by 7 days." (Transcript: decision no. 181, parole case.)

### *Adverse Developments: Conclusions*

To conclude this section, the thematics of the trust narrative would appear to permeate decision-making in relation to cases referred for an adverse development. The paradigmatic dimension of this discourse is structured around the concepts of trustworthiness and untrustworthiness and information is read by the Parole Board towards making this type of assessment. The decision-making outcomes suggest that the Board is more punitive in its approach to this case type than in cases referred for consideration of release; with outcomes being proportionate to the seriousness of the assessed breach.

#### *(iv) Recall Cases*

The final type of case I want to consider is that of the licensee referred for consideration of recall to custody. Decision-making in recall cases is framed by what I have termed the danger narrative, with offenders who match up to the Parole Board's notion of danger being recalled and those assessed as relatively safe being allowed to remain on supervision in the community. Recall papers were not provided by the Home Department to the research team for the Scottish Office study and therefore no sample of recall papers could be extracted for analysis. The following section, therefore, is based on analysis of the interview data and observed decision-making patterns alone.

#### *Perspectives on Recall: Interview Data*

Parole Board interviewees stated that the main factor which they took into consideration in recall cases was risk, both in respect of re-offending but, *more especially*, whether or not the offender was a danger to the public. Indeed there was a tendency for interviewees to elide the concepts of risk and danger and this is reflected in the key principles which were identified as underpinning the decision-making process with respect to this type of case, namely incapacitation, protection and control.



"What I think about is whether the risk of continuing supervision, the risk to the community, is too high to be sustained." (Parole Board Member)

"Risk of re-offending that's the main one but more importantly what level of risk that re-offending poses [to the public]." (Parole Board Member)

It is important to stress here the subtle but important distinction that can be made between the concept of risk as applied by the Board in parole and recall cases. As was argued, for parole cases the focus is on likely *offending* risk during the period of parole. Risk of danger would of course be a key aspect of such an assessment but a prisoner could be assessed as being high risk of re-offending without *necessarily* representing a public danger. In recall cases, by contrast risk of re-offending per se is a less significant feature than risk of danger - where licencees do re-offend then this does not automatically label them as dangerous and in need of recall to custody. (Indeed during the observation a number of licencees were allowed to remain on licence in the community where they had been convicted of further offending, as discussed in more detail below).

Interviewee responses suggest that danger to the public is generally measured by the extent to which there is risk of physical harm to others (where licencees have exhibited violent tendencies or sexually inappropriate behaviour), the extent to which supervising officers have failed to control the licencee (where the licencee is in what interviewees described as a "state of drift"); and the degree to which the licencee has exhibited signs of heavy drinking and/or continued drugs misuse.

Interviewees commented that they found cases in which the licencee had been charged with further offences the most difficult to deal with as they were required to

balance the rights of the accused with an assessment of the level of risk which the licensee posed. These difficulties were compounded when they received reports from supervising officers which stated that the licensee had been charged but without clarifying the circumstances surrounding the alleged offence nor whether the licensee's behaviour was giving cause for concern in any of the ways detailed above.

"It is the expectation of the Board that people will report to us behaviour that is adverse for want of a better word. It poses all sorts of dilemmas when people write to us saying only he's been charged with breach of the peace. What do we do about it? It's the behaviour surrounding the alleged offence which might gives us cause for concern as opposed to just writing to us to say that an offence has been committed." (Parole Board Member)

A key concern of Parole Board interviewees, however, was to support supervising officers by reinforcing the seriousness with which licensees should treat parole or release on life licence. A common view was that supervising officers only report cases to the Department where there have been a number of breaches. Any cases referred for consideration of recall were therefore perceived to be fairly serious breaches.

Surprisingly interviewees were fairly sceptical about how effective social work supervision was in preventing further offending by licensees. Whilst high quality supervision was considered to assist licensees to adhere to the conditions of their licence and prevent drift (in this respect minimise danger), a general view was that there was little social work could do to impact on offending behaviour (which rendered those exhibiting tendencies towards personal violence even more of a risk).

"I suppose the efficiency of supervision must be connected (with breach) but they'll re-offend if they're going to and there's nothing that social work can do about it" (Parole Board Member)

This reinforces the views of the Board with respect to parolees cited earlier, that release on licence should be reserved for those who are already deemed at low risk of re-offending (and therefore less in need of control).

The main thematics of the danger narrative and associated conventions are summarised in the following table.

**TABLE 5.9 SYSTEM OF SIGNIFICATION: THE THEMATICS OF THE DANGER NARRATIVE**

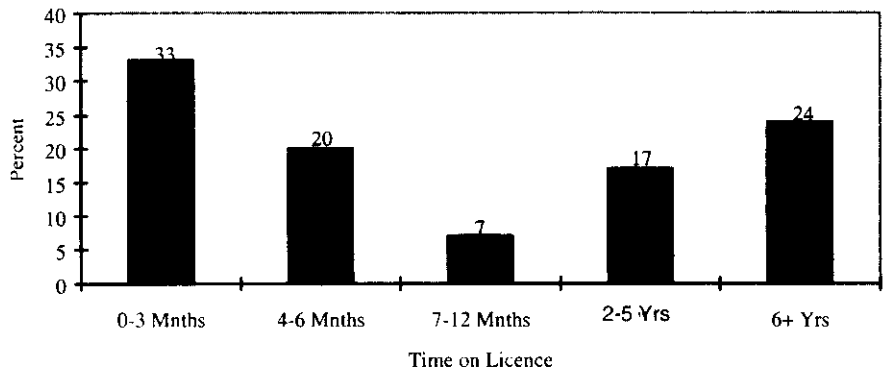
<b>DANGER</b>	<b>RECALL PROFILES</b>	<b>BEHAVIOUR IN COMMUNITY</b>	<b>RECALL CONVENTIONS</b>
(Incapacitation)			
	Dangerous	Risk of physical harm to others. evidence of drift, on going addiction problems	Recall to custody
	Safe	No risk of physical harm to others. evidence of control; no addiction problems.	Allow licence to continue (some amendments may be made to licence conditions)

How then did this narrative of danger structure decision-making in relation to recall cases?

*Observed Practice: Recall Cases*

During the observation period the Parole Board dealt with 46 cases referred for consideration of recall to custody. Just under half of these were life licencees, with the remaining cases comprising 15 parolees and 11 young people subject to statutory aftercare (which has now been abolished as a result of the implementation of the 1993 Act). All but one of the life licencees in the sample were referred to the Board after a period of at least two years on licence, with most lifers being referred after a period of at least six years. By contrast most parolees and a small number of statutory aftercare cases were referred to the Board within 3 months of release. The following chart describes the length of time on licence of all cases referred for consideration of recall.

**FIGURE 5.1: RECALL CASES: LENGTH OF TIME ON LICENCE**



*(a) Presentations*

Presentations in recall cases were very much shorter than for other case types (even shorter than lifer presentations) with presenting members focusing for the most part on the nature of the alleged breach (in 38 or 83% of cases) and the licensee's response to supervision (32 or 70% of cases). Again there is evidence that Parole Board members sift the recall papers for evidence of danger, thus structuring their reading around the thematics of the danger narrative, as exemplified in the following cases:

*(i) Recall Decision No. 12*

The presentation in the first example reinforces my contention above, that risk in recall cases is not focused around risk of re-offending but rather danger.

RECALL CASE NO. 12	
Male parolee referred for commission of further offences (vandalism)	
Presenting member recommends no change	
PRESENTATION THEMES	INDICATION OF LEVEL OF DANGER
	(Risk of Danger = D)
	(Safe = S)
Found guilty of vandalism:	S
Aside from offence exemplary behaviour	S

As can be seen from the table, this case is that of a male parolee convicted of offences involving vandalism. As this offence did not involve risk of physical harm to others, it signifies that the licensee is relatively safe. This is reinforced by the supervising officer' report which highlights the licensee's otherwise exemplary behaviour (signifying safety once more). The presenting member recommended that the parole licence be allowed to continue with no changes being made to the current licence conditions.

*(ii) Recall Decision No.29*

The second example follows a similar pattern. The parolee in this decision was also referred for commission of further offences - road traffic offences and attempting to pervert the course of justice (gave the wrong date of birth). The offences did not involve personal violence to others and therefore did not signify risk of danger.

<p>RECALL CASE NO. 29</p> <p>Male parolee referred for commission of further offences (charged with road traffic offences and attempting to pervert the course of justice)</p> <p>Presenting member recommends sending a warning letter stating expectation of Board is that he will continue to co-operate with his supervising officer and keep out of trouble</p>	
PRESENTATION THEMES	<p>INDICATION OF LEVEL OF DANGER</p> <p>(Risk of Danger = D)</p> <p>(Safe = S)</p>
<p>Nature and circumstances of offence:</p> <p>Attended all HIV counselling appointments.</p> <p>Attending drug project:</p> <p>Initially not keeping appointments with supervising officer but now doing so.</p>	<p>S</p> <p>S</p> <p>S</p> <p>Initially D now S</p>

As the table indicates, the presenting member focused on the main aspects of the case which signified safety: namely the offender was undertaking counselling and addressing addiction problems; and control had now been asserted by the supervising officer after early failure on the part of the licensee to keep appointments (demonstration of positive change). The presenting member recommended a warning letter only, to reinforce the importance of sustaining the licensee's recent greater commitment to supervision.

*(iii) Recall Case No. 31*

The final example is of a male parolee who had been convicted of further offences involving violence.

RECALL CASE NO. 31	
Male parolee referred for commission of further offences (violence)	
Presenting member recommends recall to custody	
PRESENTATION THEMES	INDICATION OF LEVEL OF DANGER
	(Risk of Danger = D)
	(Safe = S)
History of Violence and Disorder and committed a further violent offence while drunk;	D
Failed to attend for drug counselling;	D
Alcohol counselling not yet started;	D
Poor response to supervision,	D
Absconded for three months	D

The main themes of the presentation signify risk of danger as set out in the system of signification, in particular: the violent nature of the current offence in the context of a history of violence; the breakdown in control over the offender together with his continued addiction problems. The presenting member recommended recall to custody.

*(b) Decision-making Outcomes*

As with other case types there was a high degree of consistency in the decisions made by the Board and again a number of conventions associated with particular outcomes can be discerned. However, in practice, the nature of these conventions were more complex than the thematics of the danger narrative might suggest, with the conventions differing according to the *stage* in the criminal justice process at which the recall case was referred. Different conventions applied to cases: (i) where licencees had been charged with further offences but the case had not yet gone to trial; (ii) where licencees had been convicted of further offences; (iii) where licencees had been found not guilty by the courts or the charges against them had been dropped; and (iv) where licencees had been reported for breach of other licence conditions. Nonetheless the reasons given for outcome consistently focused on the theme of danger/safety.



(i) Charged Cases

Cases where the licensee had been remanded in custody or who had been subject to a Secretary of State's recall were continued to await the outcome of the trial. The key reason being that the custodial remand meant that *public safety* was assured.

"Charged with a serious assault. Risk to the public and was allegedly drunk at the time. Continue for the outcome of the trial". (Transcript: recall case no 23, life licensee.)

Where a licensee was not in custody, cases were recalled by the Board where the behaviour of the licensee was considered to represent a heightened danger (for example where the alleged incident involved violence, or where licensee had been under the influence of alcohol or drugs).

"Alleged violent assault and had been drinking heavily. Similar to other offences, a danger" (Transcript: recall case No.14, parolee.)

"Pled guilty to theft. But going off the rails, abusing alcohol a public danger. Recall" (Transcript: recall decision no.55, life licensee.)

There was only one exception to this pattern. This was the case of a licensee who had been granted bail with strict conditions. The Board agreed to allow the licensee to remain in the community as the bail conditions were believed to enhance the controlling elements of the parole licence. In this respect the overriding principle of public safety was still upheld.

## (ii) Non-convicted Cases

In cases where charges were dropped or the licensee had been found not guilty by the court, the Board based its decision on the assumption that the behaviour associated with the allegations had been accurately reported. The outcome of such cases was therefore determined by the level of danger which such behaviour posed and the nature of the licence itself (whether parole or life licence).

For life licensees, behaviour associated with heightened risk of danger resulted in increased reporting frequency to ensure greater control over their behaviour. An example of this was a case where the licensee had been accused of assaulting his partner but the charges had been dropped. The Board agreed to increase reporting frequency in order to monitor the licensee's behaviour more closely. For parolees, risky behaviour resulted in warning letters being sent rather than variations in the conditions of the licence.

Where the behaviour of the licensee was not associated with heightened risk no change was made to the existing conditions of the licence for either parolees or life licensees.

## (iii) Convicted Cases

In cases where the licensee had been convicted of further offences the rules applied by the Board related to: the disposal given by the court; the perceived seriousness of the new offence; and again the nature of the licence.

Cases were recalled or recall was confirmed where the licensee had been convicted of serious offences (especially violent offences) and where the court had given a high tariff disposal (prison sentence or community service).

Life licencees found guilty of minor offences (i.e. not involving sexual or violent behaviour) and given low tariff disposals (for example a small fine or a compensation order) had their reporting frequency increased to monitor behaviour; similar parole cases were sent warning letters about their behaviour.

"Breach of the peace had has been fined. He did not report the offence to his supervising officer. Need to increase reporting frequency."  
(Transcript: recall case no. 39, life licencee.)

"Fraud and has been fined. Last report coping OK (with supervision)  
Send warning letter." (Transcript: recall case no 36, parolee.)

There was again one exception to this general pattern, that of a parolee found guilty of assault and given a probation order by the court. The Board agreed to do nothing in this case suggesting that the additional social work intervention would be sufficient to minimise risk to the public.

#### (iv) Breach of other licence conditions

During the observation the Board considered the cases of 3 licencees who had been reported for breach of other licence conditions. These licencees were deemed to be out-with the control of their supervising officers through missed appointments, eviction from accommodation and/or failure to attend alcohol counselling. As their behaviour was assessed by the Board to be presenting a danger to the public all 3 were recalled.

"Recall. Not kept appointments not attended alcohol counselling, not turned up at place (supported accommodation) the supervising officer arranged for him." (Transcript: recall decision no. 47, parolee).

The reasons given for all outcomes are summarised in table 5.10.

**TABLE 5.10 RECALL CASES: REASONS FOR OUTCOME**

<b>Reason</b>	<b>Recall Number (n=13)</b>	<b>Change Reporting Number (n=8)</b>	<b>Warning Letter Number (n=3)</b>	<b>No Change Number (n=3)</b>	<b>Continue Case Number (n=19)</b>
Public Danger	12	4	-	-	-
Addiction Problems	4	1	-	-	-
Poor Response to Supervision /Behaviour Giving Cause for Concern	3	3	1	-	-
Good Response to Supervision	-	-	1	3	-
High Tariff Court Disposal	3	-	-	-	-
Low Tariff Court Disposal/ Minor Charge	-	-	1	1	-
Not Informed Supervising Officer of Charges	-	1	1	-	-
Undesirable Associates	-	1	-	-	-
Await Outcome of Trial					15
Await Information about Response to Supervision					4

Numbers in some columns exceed total number of cases as more than one reason was given in some cases

#### *Recall Cases: Conclusions*

To conclude this section, decisions in relation to recall appear to be focused around the thematics of the danger narrative, the deep structure of the discourse being structured around the concepts of safety and danger. The Parole Board

systematically applies a complex set of conventions the outcome of which is geared to protecting the public.

*(v) System of Signification: Conclusion*

The analysis of Parole Board practice would suggest that decision-making is structured around a series of binary oppositions which build into a number of distinctive narratives: risk, progress, trust and danger. Taken together these narratives form a broader system of signification, against and within which individual cases are considered. These narratives limit the information perceived to be relevant in particular cases and play a key role in shaping decision-making outcomes.

Having explored the different dimensions of the Parole Board's system of signification, I now want to consider in more detail the derivation of the system and its implications for penal dynamics.

The Derivation of the System of Signification

The evidence suggests that the system of signification, structuring the practice of the Parole Board, has been in place almost as long as the Board has been in existence. Close examination of the annual reports of the Parole Board highlights *continuities* in the key factors taken into consideration by the Board, especially in respect of the thematics of risk (explicitly addressed in the annual reports of the Parole Board from 1968 onwards). This was confirmed by Parole Board interviewees. Two interviewees were very long-standing members of the Board and both stated that they had not discerned any changes in practice during the time in which they had sat on the Board. Given that the legal and policy framework of parole did not give any *detailed* guidance on decision-making (at least until 1993 when the Parole Board (Scotland) Rules 1993 were instituted), then this would suggest that the system of signification

has derived from the customary workings of the Board, in the words of one Parole Board interviewee "how things have always been done".

While the system may have evolved from custom, it is likely that it has retained its imprimatur through the strong socialisation processes at work amongst Board members. What is particularly striking from analysis of both the interview and observation data is the high level of agreement and consistent use of the same conceptual vocabulary amongst a group of people drawn from different institutions and backgrounds. Although the enabling legislation for parole indicates that a range of different perspectives should be brought to bear on decision-making (through the inclusion of a representative from the judiciary, a person with experience of supervising offenders in the community, a member of the academic community etc.) it would appear, from both interview and observation data, that they all come to "think" the same way.

An illustration of the socialisation process in operation occurred during the fieldwork period. The start of the fieldwork coincided with the appointment of two new members of the Parole Board. At first these members were only permitted to observe meetings. After each had attended four meetings they were given seven cases to present over the course of the fifth and sixth meetings. Both members saw the early meetings as an opportunity "to learn the language of Parole" and both spoke of the pressures to ensure that their first few recommendations were accepted by the full Board. This meant focusing on risk, progress, danger and trust in appropriate case types.

Analysis of the uptake of presenting members' recommendations highlights major differences between the success rate of the newest members of the Board (which was relatively poor: on average a 57% success rate) and almost all of the older more

experienced "hands" (which was high: on average an 86% success rate).<sup>72</sup> Detailed examination of the successful and unsuccessful presentations of the newer members suggests that success is to a large extent predicated in constructing the case in a manner which closely follows the thematics and more particularly the conventions of the appropriate narrative.

The unsuccessful presentations of the new members, tended to apply the wrong conventions to the case: in Jackson's terms the presentations reversed the normal categorical associations and thereby did not make sense to the full Board. A typical example of this relates to Case 272, that of a sex offender serving a long term determinate sentence at third (but not final) review.

CASE 272	
Sex Offender at third review	
Long term sentence	
PRESENTATION/RECOMMENDATION	THEMATICS OF RISK NARRATIVE (HR = High risk)
High number of previous convictions	HR
Discrepancies between note of circumstance and prisoner's representations	HR
No effective prison-based work on offending behaviour nor alcohol problem	HR
Recommendation for parole: structured package of help in community better than anything that could be offered in prison. Condition of licence that social workers work with family in community and with licensee on alcohol problems	Not suitable for parole: high risk  Change to be effected in custody prior to release

<sup>72</sup> When interpreting these figures it should be remembered that the average number of presentations for the older members was 28 cases, whereas the new members only had seven cases each and this has the potential to produce distortions in outcome.

As indicated in the table, the presenting member used the appropriate narrative for case type (the narrative of risk) but applied the conventions in a distorted fashion. The prisoner was assessed as being extremely high risk and not at final review for parole purposes. According to the conventions of the Board, the prisoner should not be recommended for release. The presenting member, however, suggested parole. In *their view, the prisoner would receive better support in the community than could be provided in prison*. Given the Board's overriding focus on change in custody in this case type, the presenting member's recommendation was rejected by the full Board.

Interestingly for more experienced members of the Board, unsuccessful recommendations related neither to inappropriate choice of narrative nor distorted use of conventions. They generally occurred in "hard cases" where either the dossier information included an inordinately high number of contradictory assessments or a fine distinction required to be drawn between the safety of retaining a prisoner in custody or releasing him to a controlled environment (on balance cases).

#### Implications of System of Signification for Penal Dynamics

What then are the implications of the Parole Board's system of signification for penal dynamics and for the relational model of penalty?

The nature and enduring strength of the system of signification suggests that Parole Board practice has become essentially self-reflexive: verging on a closed normative system of communication. The deep structure of the narratives which comprise the system has tendencies towards conceptual closure. As Jackson argues, networks of binary oppositions limit the choices that can be made at any stage within a particular narrative syntagm (as per the semiotic square described earlier in the chapter). This is because narratives only make sense where concepts are utilised which are customarily substitutional for each other. The imperatives of sense construction appear, therefore, to have locked the Parole Board into particular ways



of thinking about different categories of referral (recall, adverse development etc.); which are replicated in case after case, decision after decision. By consistently sifting and reworking information presented to it according to the demands of the binary networks within the system of signification, the Board's practice is in a constant process of self-reproduction.

As was said, the narratives which comprise the system of signification are self derived, predominantly from customary practice. The Board's own discursive practice (rather than any external guidance provided by the legal and policy framework) becomes, thereby, the touchstone against which decision-making is played out. Not only are the narratives and decision-making conventions self-constructed they undergird every decision which is taken. It is in this way, I would suggest, that Parole Board practice displays aspects of the hypercyclical dynamics, characteristic of an autopoietic system of communication. As with hypercyclical linking, elements of the Board's practice (rules/conventions, actions/decisions) are reflexively coupled to each other: each constituting and reconstituting, describing and reproducing the other. Returning to the elements of the system set out in Diagram 5.1, Parole Board practice is exemplified by the circle linking penal practices, bureaucracies and philosophies and symbolic representations. Given my argument with respect to hypercyclical coupling it might be expected that symbolic representations, as exemplified by official policy discourse (see chapter 3), would not be included within this circle. (The policy framework of parole is manifestly not the creation of the Parole Board). As mentioned in chapter 1, however, autopoietic theory does not preclude any contact between a system and extra-systemic discourses, merely that where a system picks up on such discourses it will reconstruct and give meaning to them according to its own imperatives. The evidence suggests that this is precisely what has occurred within the evolution of the Parole Board's system of signification, with the Board absorbing elements of the policy framework which accord with its own discursive practices and rejecting those

elements which do not (as discussed below in respect of the symbolic framework of prisons, parole and social work policy).

Where then does this place the Parole Board in the context of the broader penal system itself? The research findings suggest that the autopoietic dimension of Parole Board practice constitutes a species of sub-system (more particularly a sub-system of communication). This sub-system operates at the interstices of the linking mechanisms which underpin the systematic relationships between the Parole Board and other elements in the penal realm (at both an institutional and discursive level). The capacity of the sub-system to function in an autopoietic fashion has lent Parole Board practice a high level of autonomy and a high degree of stability, protecting it from external turbulence within the broader system. Nonetheless, I would argue, the dynamics of the sub-system contain within them two fundamental paradoxes.

With regard to the first paradox: the space which the Parole Board has colonised was in the first instance created by other elements of the system and is currently sustained by them. In this respect the external boundaries of the sub-system (within which the Board has evolved its self-reflexive practice) are contingent upon the configuration of other institutions and other discursive structures within the broader system. A symbiotic relationship therefore exists between the Board's scope for reflexivity and, what may be termed, intra-systemic boundary mechanisms. Most system's theorists would argue that one of the consequences of this is that such a sub-system could not be regarded as truly autopoietic (see for example Luhmann 1987, Teubner 1993). I would suggest that the space within which sub-systems or indeed systems evolve is likely to be sustained by factors external to the sub-system/system: what might be termed the dark side of the systems, shoring up or delineating the conceptual or physical space for the particular species of system to develop (a point which I shall return to in chapter 7).

With regard to the second paradox: there is a danger that the autopoietic trajectory of the Board's practice could result in the Parole Board becoming remote from the broader system: in particular at moments of evolution within the broader system (with the cyclical dynamics illustrated in Diagram 5.1 becoming uncoupled from the other dimensions of the system). Under such circumstances the Parole Board's self-reproducing insularity has the potential to undermine the ability of the Board to play its role within the wider system. The inertia produced by its self-determining practices could then weaken linkages in the wider system: systemic instability being produced out of the very stability of the sub-system itself.

Indeed the very reflexivity of Parole Board practice and its tendency towards normative closure have profound implications for the transformative potential of the wider system. This is because they can operate as a brake on change or, in terms of my model of penal system, as a cultural filter, enabling the Parole Board to resist some of the broader shifts which occur in the parole policy framework. In recent years this has been most evident with respect to social work policy. As was mentioned at the beginning of the chapter, social work policy is currently focused on the provision of high quality community-based social work services aimed at encouraging the Board to release higher risk prisoners on licence at an earlier stage. The thematics of the risk and progress narratives, in particular, focus the attention of Parole Board members on efforts made by the prisoner to change in custody. Where such efforts have not been demonstrated, the quality of social work in the community is of little significance to decision-making outcome. While both prisons policy (with its emphasis on the development of prisoner programmes) and elements of parole and early release policy (in particular the increased prominence accorded to risk management and public protection) may appear to have more to contribute to decision-making, analysis of the thematics of the risk and progress narratives suggest that they merely reflect and serve to reinforce existing practice.

Recent shifts in parole policy have not, therefore, resulted in the transformation of Parole Board practice. Indeed my argument suggests that any transformation of practice would require a breach in the reflexive dynamics driving the Board's system of signification, resulting in a more open-textured normative framework. I would suggest that this might be effected in two ways:

(i) Firstly through a dramatic shift in the boundaries of the Board's discretionary space. The shift would almost certainly require the exercise of Ministerial power (as might have occurred recently had Ministers decided to implement all of the provisions relating to parole in the Crime and Punishment (Scotland) Act 1997, see chapter 3). This points to a further aspect of penal dynamics, which I will return to in more detail in chapter 7: the immanence of political power within the penal system.

(ii) Secondly through the exercise of collective will on the part of the Board itself, to develop a more open-textured discursive practice. Paradoxically the dynamics of the system of signification, in particular the manner in which they serve to limit ways of thinking, are likely to inhibit any impulses in this regard.

### Conclusion

Intermediate institutions, such as the Parole Board have the potential to colonise their discretionary space with a reflexive and self-reproducing practice (the dynamics of looping). As I have aimed to demonstrate, the deep structure of the system of signification which inheres within Parole Board decision-making, tends towards normative closure. This places a brake on transformative impulses, giving the Board the ability to resist or absorb elements of the policy frame according to whether such elements can be assimilated within the terms of its own discursive framework.

The dynamics of reflexivity or looping suggest that the Board has evolved a relatively autonomous decision-making practice. At the beginning of the chapter I argued that the Board was, *nonetheless, firmly enmeshed in the broader penal system*. In the next chapter I will explore in more detail the processes of both positive and negative relationality which serve to root the practice of the Board and the nature of the dynamic equilibrium which would appear to have been established between these rooting processes and the looping aspects of the Board's system of signification.

## CHAPTER 6

### PAROLE BOARD DECISION-MAKING: CASE STUDY C

#### PART II: BUREAUCRATIC DYNAMICS

##### Introduction

In the previous chapter I highlighted the manner in which the looping dynamics of the Parole Board's system of signification have engendered a degree of autonomy in the Board's customary practices. In this chapter I want to explore the limitations of looping, in particular the immanence of what I have termed "rooting" processes within the Board's practice.

As was stated the term rooting is used to describe the features of systematicity which serve to circumscribe and delimit (at certain junctures) the self-reflexive nature of Parole Board decision-making: features which Selznick would characterise as the recalcitrant tendencies of bureaucracies (see Selznick 1966). I aim to demonstrate that such rooting processes have both a negative or reverse dimension as well as a positive dimension and that it is the balance struck between rooting and looping which contributes to the momentum for systemic reproduction.

*The Parole Board is a key gatekeeper in the penal system, overseeing the passage of selected prisoners from custody into the community and certain licencees from the community back into custody. In this regard, the effects of its sub-systemic decision-making practice impel movement within the broader system: the extent to which the Board's intentions (its decision-making outcomes) are fully realised in practice, is dependent on the manner in which other dimensions of the system respond to this impulsion. At the same time the decision-making process itself is underpinned by a strong dependency on other agencies within the system, particularly with regard to the provision of information. It is my contention that it is these types of linkages that form the mechanisms through which rooting occurs,*

over and against which the sub-system of communication (inhering within the discursive practice of the Board) is played out. In terms of the model of penalty set out in Diagram 5.1, this implies that there is an interplay between the looping dynamics of the sub-system of communication, represented by the circle in the diagram, and the dynamics of inter-bureaucratic relationships, represented by the linkages within the box labelled "Penal Bureaucracies".

I'm going to begin this chapter by describing a number of the links (or chains of dependency) between the Parole Board and other elements of the penal system as they relate specifically to: services in prison; community-based social work services and supervision; the provision of information for decision-making; and finally liaison and input into the development of parole and early release policy. Using evidence from the interview, observation and dossier-sample data, I will explore the positive and negative relational processes which flow through these linkages. The chapter will conclude with a consideration of the implications of rooting for an understanding of penal dynamics.

### Prison Services

The narrative frameworks which under-gird Parole Board practice, suggest that prison-based services have the potential to be of key importance to decision-making. As was seen in chapter 5, Parole Board decision-making is predicated on the expectation that prison units will provide a network of services for prisoners to assist them to reduce their level of risk (in the case of determinate sentence prisoners) and to make general progress (in the case of lifers). The Board's decisions to recommend early review or (for lifers) to recommend a formal referral at next review, are often taken in the expectation that the prisoner will be able to obtain a placement on a specified programme (the participation of the prisoner therein, enabling the Board to assess the prisoner's motivation to change). The Board's ability to make assessments of risk and progress will therefore be highly dependent upon the extent

to which such a network of services is actually available in particular prison establishments and the quality of services on offer.

Services within prison establishments are provided by SPS, a range of independent sector agencies such as Alcoholics Anonymous or the Scottish Drugs Forum, and social work. The evidence suggests that the chain of dependency between the Parole Board and the providers of services in prison, is characterised as much by processes of negative as by positive relationality. In order to demonstrate this, I will examine firstly Parole Board interviewee perceptions of the services provided by SPS and independent sector agencies, secondly their expectations of prison social work services and views on quality, and finally I will explore the impact of all of these services on the *observed* decision-making practices of the Board.

#### *(i) Services Provided by SPS and Independent Sector Agencies*

Parole Board interviewee responses indicate that there is wide variation in the range and quality of specialist services provided by SPS and independent sector agencies: with some prison establishments being relatively well catered for and others lacking a number of, what were perceived to be, key services. The main areas requiring further development were identified as: psychiatric and psychological services<sup>73</sup>; and specialist drugs and alcohol counselling services.<sup>74</sup> Where such gaps were evident, interviewees agreed that this often resulted in early review decisions with a request that the prisoner be relocated in an establishment with more suitable resources.

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<sup>73</sup> Since the time at which the fieldwork was completed SPS has created a directly employed psychological service (established 1996/7).

<sup>74</sup> The interviews with Parole Board members were conducted shortly before the mushrooming of prisoner programmes in the mid to late 1990s. As with psychological services, many of the other gaps identified may now have been addressed: although further research would be required to confirm whether members of the Parole Board considered that the new programmes were of sufficient quantity and quality to overcome their concerns.



"The other resources that people require in prison are not always there. Frequently a particular establishment doesn't do drugs, alcohol or psychological counselling... it is left to the social worker to deal with those things.....Sometimes prisoners, however well motivated, can't address their problems because the services simply aren't there. They won't be given parole but we do suggest that they are moved to a prison where the services they need exist." (Parole Board Member)

The main reason for this variation in service was considered to be failure in strategic planning on the part of SPS, its ignorance of Parole Board requirements for services (discussed again in the section on liaison below) and finally the under-developed nature of sentence planning, which resulted in prisoners being housed in inappropriate establishments for their particular needs .

#### *(ii) Prison Social Work Services Availability and Quality*

As was mentioned, services are also provided by social workers in prisons. There was consensus amongst Parole Board interviewees regarding their expectations of prison social work services. All stated that the key role of the prison social worker should be to assist offenders to address their offending behaviour.<sup>75</sup> This accorded with the policy then covering the prison social work role (Continuity Through Co-

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<sup>75</sup> During the observation a high proportion of cases were not recommended for release, in part, because the prisoner had not addressed their offending behaviour (68. or 80% out of 85 determinate sentence cases not recommended for parole or given an early review). Parole Board interviewees were asked to comment on this pattern and whether there were any links between the outcome of these decisions and the effectiveness of the services which prison social work offered.

Most interviewees did not attribute this pattern of decisions to shortcomings in the social work role, with one interviewee commenting that the services which prison social workers offered were generally extremely effective in assisting prisoners to address their offending (as evidenced by information provided in the dossier and visits made by this Parole Board member to prison units). A number of interviewees recognised, however, that the impact of social work on behaviour and attitudes was often dependent on the motivation of the individual prisoner to change. Absence of such motivation meant that prisoners generally would not be accepted for counselling on specialist programmes, for example sex offender programmes.

"Prison social workers can on the whole usually get through to a prisoner and are acceptable to them. But the effectiveness of services really does depend on the prisoner going half-way to the social worker." (Parole Board Member)

One Parole Board member commented that prisoners often had negative views of social work especially in cases where the prisoner's children had been taken into care or where the prisoner had been subject to social work supervision as a child. Under these circumstances social workers required to overcome "a good deal of prejudice" before they could work effectively with the prisoner.

operation see chapter 4).<sup>76</sup> A secondary role identified was to refer prisoners to agencies both inside and outside the prison which offered specialist programmes, for example specialist alcohol counselling services.

A number of Parole Board interviewees expressed concern that there was little consistency in the range of social work services across prison units nor was there evidence of a structured approach to service development. One of the consequences of this variation in the range and quality of prison social work services, was that prisoners in certain establishments had better opportunities to address their offending than prisoners elsewhere. Key areas requiring further development in some units, were identified as: relationship counselling; services for gamblers; and anger management work.<sup>77</sup> Even where a broad range of social work services was available, concern was expressed that sometimes services were over-subscribed and the prisoner could not access them prior to their case being referred to the Board.

"Why can't they ensure that 'Joe Bloggs' arrives [in prison] and starts the [specialist sex offender] programme in weeks one or two? They'll only get parole if we get positive reports and there are often substantial time delays between arriving at the institution and the prison being able to deliver a place on the programme." (Parole Board Member)

Gaps in services or waiting lists for places created difficulties for the Board when making decisions on individual cases. As was mentioned, early review decisions were given, on occasions, in the expectation that the prisoner would undertake some form of counselling prior to the next review. Parole Board interviewees commented that such cases were often referred back to the Board at the end of the review period,

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<sup>76</sup> Since the time at which the fieldwork was completed, prison social work services have been made subject to National Standards: the standards set out at range of priorities and core activities for prison social workers, as well as a statement of the operational principles of the prison social work role. A central focus of this is addressing offending.

when no work had been undertaken with the prisoner due to lack of available services.

"What do we do? Do we stick by our decision which in our view is the right one for the prisoner and it is a prison management problem? Or do we think it probably won't be there but still ask or do we alter our decision....what do we do with the prisoner when it is resources and not them? They can't move on to the next stage, so they have to tread water."

(Parole Board Member)

Interviewee responses suggest that the main contributing factor to the uneven spread of services, was that prison social work was often under-resourced. Indeed it was described as the "Cinderella" service within prisons. This echoes the views of the parole and life licence administrators and prison social workers (discussed in chapter 4), who claimed that the prison social work role remained both under-resourced and under-developed because of the split between the management of services - undertaken by local authority social work departments - and the funding of services - which was the responsibility of SPS. In this respect the structural filters (which I argued in chapter 4 have inhibited the full implementation of social work policy as it relates to parole), would appear to have the potential to thwart the intentions of the Parole Board with respect to decision-making in certain cases.

### *(iii) Impact on Decision-making: Observation Data*

As noted above, Parole Board decision-making practice is underpinned by a general expectation that prisoners will have access to services in prison to assist them to make efforts to change. During the observation the presence or absence of services

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<sup>77</sup> Although anger management work was identified as a key gap in services by a number of interviewees, one interviewee considered that there were too many unevaluated anger management programmes underway.

was a factor explicitly mentioned in only 36 (12%) out of 290 relevant decisions.<sup>78</sup> Nonetheless these small number of cases help to demonstrate the manner in which positive and negative relationality operates in practice.

*Specific Requests for Services*

Specific requests for services were made in 21 cases (7% of 290 relevant decisions), as summarised in the following table.

**TABLE 6.1 REQUESTS FOR PRISON SERVICES**

SERVICES REQUESTED	NUMBER (n=21)
Alcohol Counselling	12
Drug Counselling	4
Psychological Counselling	2
Anger Management	1
Move to Suitable Establishment	3
Change Elements of Pre-Release Programme	2

Numbers add up to more than 21 as in some cases more than one service was specified

As indicated in the table most of the requests were for some form of counselling, especially alcohol counselling. In three cases the request was for a move to an establishment which could offer the type of service required by the prisoner.

Just over half of these cases (11 out of 21) were continued for further information as to whether the services requested could be provided. Five other cases, referred to the Board for adverse developments, had their release dates withdrawn: the request for services being to enable the prisoner to tackle the problems which the Board perceived as impelling the adverse behaviour. Of the other cases, three obtained

<sup>78</sup> Only 290 of the 345 observed decisions are relevant : the remaining 55 decisions relate to recall cases for which the availability of prison services was never a theme in decision-making.

forward dates, release being conditional upon the completion of a specified counselling programme. Two further cases received early review decisions, the aim being to assess progress.

### *Lack of Services*

Lack of appropriate prison-based services had a direct impact on the outcomes of a further 15 or 5% of relevant decisions. This was mainly in respect of the lack of specialist drug counselling services in one particular prison unit (14 out of the 15 cases). The one exception to this, was the case of a sex offender housed in a prison unit where there was no specialist sex offender programme. The Board wanted each of these 15 prisoners to undertake a period of counselling but were unable to make the request as members knew that such services were not available.<sup>79</sup>

“ - Reservations - has he really been properly assessed?

- Playing down his involvement in the offence.

- No parole without a period of counselling.

- It's not available there. What can we do - he needs counselling but we can't request this in the prison where he currently is.

- Our decision is therefore not to release because of risk of re-offending”

(Transcript: decision no. 265, long-Misuse of Drugs Act offence, long sentence.)

In each of these cases the Board agreed not to recommend the release of the prisoner, as without access to the relevant services such prisoners presented a high risk of re-offending.

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<sup>79</sup> In none of these cases was an *explicit* request made for the prisoner to be transferred to a more appropriate prison unit. The reasons for this are not immediately obvious from the observation transcripts. It may be that the Board believed that the reasons for their decisions (recorded in the minutes of the meeting) would, in themselves,

The implication of the above decision-making patterns is that where the required network of services is available in a particular prison establishment, then this has the potential to facilitate decision-making, enabling the intentions of the Board (at least in principle) to be realised in practice (positive relationality). By contrast, absence of information about whether in fact a particular service exists can lead to delays in decision-making (as represented by the continuations) and lack of availability of services can thwart the Board's intentions with regard to a particular case, as exemplified by many of the decisions not to recommend release (negative relationality).

To conclude this section, the linkages between the Parole Board and SPS appear to be characterised as much by negative as positive relationality. The evidence suggest that negative relationality has been precipitated by failures on the part of SPS in respect of planing and resourcing of services and the structural filters which have inhibited the requisite development of prison social work.

Having discussed the nature and operation of the linkages between the Parole Board and the provision of prison services, I now want to explore those relating to community-based services for licencees.

### Community-based Services

The narrative framework underpinning Parole Board practice would suggest that community-based services are, in most cases, of less salience in decision-making than prison-based services. Nonetheless, the quality and availability of community-based services have at least two important implications for the decisions which the Parole Board takes. The first of these is in respect of decisions made to insert additional requirements into the licences of parolees or lifers. Additional

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be sufficient to impel action on the part of both SPS and the parole and life licence administrators, to ensure that

requirements are often included in the licence as a means of risk management; as one interviewee confirmed “to *maintain* low risk” (my emphasis). The second of these implications is in respect of recall decisions where, as indicated in chapter 5, the quality of the control offered by the supervising officer and, for example, community-based drug or alcohol counselling programmes, can impact on decisions whether or not to allow supervision to continue.

Community-based services are provided mainly by local authority social work departments, although an increasing number of independent sector agencies have become involved such as SACRO and APEX (Scotland). As was mentioned in chapter 4, the planning of services and the funding of independent sector agencies is under the direct aegis of the local authorities, with supervision of licencees being undertaken by social workers under the direction of their line managers.

I’m going to begin this section by setting out the Parole Board’s concerns in respect of perceived limitations in the range and quality of community-based services and supervision and their implications for decision-making, before examining the impact of services on the observed decision-making practices of the Board.

#### *(i) Limitations in the Range and Quality of Services*

There was consensus amongst Parole Board interviewees that there was an uneven spread of services across Scotland. When making decisions on additional requirements they were conscious of weighing the need for greater control over the prisoner in the community, against the scarce level of resources in some areas. Much of this variation was attributed to poor strategic planning on the part of local authority social work departments.

"Some [social work departments] are better in thinking strategically than others and where they do by and large you'll have all the services there. With others its not the case. So you might have too much of one [service] and not anything of others "(Parole Board Member)

These difficulties were compounded by the contribution of the independent sector to service provision.<sup>80</sup> Interviewees commented that such agencies tended to be "fighting over the same clients" and duplicating each others efforts, rather than assisting in the development of a well-balanced network of services.

A further concern of interviewees relating to the independent sector, was that (unlike the statutory sector) it was not always sufficiently rigorous in monitoring and evaluating its own performance and, therefore, the quality of services could be suspect. While most Parole Board interviewees considered that the independent sector had a vital role to play in providing services which were not available in the statutory sector, there was concern that their role was limited because the independent sector tended to be resource rather than needs led:

"It's poor for all sorts of reasons. Most of the facilities that are available are provided by voluntary organisations who are themselves limited in terms of what they can do on the basis of resources. Too often what is available is not there on the basis of need but how you get the money."  
(Parole Board Member)

Parole Board interviewees were particularly concerned with the massive expansion (as they saw it) of drug and alcohol counselling services and the relative under-development of services (both statutory and independent sector led) catering for the needs of specific groups of offenders including: young adult offenders; women;



violent offenders; and mentally disordered offenders. In addition interviewees commented on the need for more community-based sex offender programmes; residential drug rehabilitation placements; and different forms of accommodation, such as supported accommodation or hostel placements. These responses reflect those of community and prison-based social workers discussed in chapter 4. In that chapter I suggested that one of the reasons for the poor development of community-based social work services was because local authority social work departments had chosen to focus resources on the court-based aspects of social work criminal justice services. The findings in this chapter would suggest that this structural filter (as I characterised it in chapter 4) has the potential to act as an impediment to Parole Board decision-making, in particular where the Board is unable to recommend release because of the lack of a specified service (discussed in detail below).

#### *(ii) Community-based Social Work Supervision*

In addition to commenting on the range and quality of services, Parole Board interviewees were also asked about the quality of supervision offered by individual social workers. The expectation of Parole Board interviewees was that supervising officers would provide a mixture of care and control: helping licencees to reintegrate back into the community, yet also providing the requisite amount of control (defined as keeping tabs on licencees and assisting them to organise their time in a productive manner) to ensure that they stayed out of trouble

Only one Parole Board interviewee was generally satisfied by the quality of community-based social work supervision: commenting that since the implementation of the National Standards, supervision had become more tightly focused around risk management and that this had enhanced the controlling aspects of the licence. The other interviewees stated, however, that they had very little information about the process of supervision, nor were given regular feedback

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<sup>80</sup> The National Objectives and Standards for Social Work services state that local authorities must consider the

on the progress of parole licencees. As a consequence they were unsure as to how far community-based supervision met with their requirements. Often the only information they received on parole cases was when problems had arisen and the licencee was being referred for consideration of recall.

“....what we lack is appropriate feedback. If we've released a sex offender and they've made it and they've done it because a specific resource is available in the community to which they've gone as a condition and it's worked - that is the kind of information we need - there is no statistical information no analysis of success rates - we'd be more willing to take that kind of risk if we had more information.” (Parole Board Member)

By contrast all interviewees had access to far greater information on the supervision of life licencees because of the requirement for supervising officers to submit regular progress reports. Interviewees were concerned, however, that supervising officers did not always appear to understand the expectations of the Board in respect of contact with the offender and reporting frequency. For example where the Board requested quarterly reporting they would expect the supervising officer to have more frequent contact than this (the frequency of reporting was considered to enhance the controlling elements of a licence). In the Board's experience, supervising officers often only contacted their client when a report was required. A further concern was that the additional conditions that were attached to many life licences were often not supervised adequately. Again it was felt that lack of resources often contributed to this, with social workers having little time for the supervision of licencees due to a number of competing priorities (for example preparation of reports for the courts or supervision of probationers).

*(iii) The Impact of Services and Supervision on Decision-making*

How then did the perceived variable quality of services and supervision impact *in practice* on decision-making outcomes? To answer this I'm going to examine: firstly the nature of additional requirements which were inserted into licences during the observation period; and secondly decisions in which the presence or absence of community-based services and/or supervision was an explicit factor in the reasons given for outcome.

*Additional Requirements*

During the observation period the Board inserted additional requirements into the licences of 50 prisoners, the services requested are summarised in Table 6.2 below.<sup>81</sup> A minority of these were to be included in the prisoner's licence "at the discretion of the supervising officer".

**TABLE 6.2: ADDITIONAL REQUIREMENTS IN LICENCE**

Additional Requirement	Number (n=50)
Alcohol Counselling	33
Drug Counselling	21
Supported Accommodation	9
Psychological Counselling	7
Anger Management Counselling	2
Employment Training	1
Social Skills Counselling	2
Counselling on Offending	1
Place on Sex Offender Programme	1

Numbers add up to more than 50 as more than one additional requirement was included in some licences

The table indicates that, as with prison services, the highest demand is for a range of counselling services in particular alcohol and drugs counselling. In this regard the services most frequently included as requirements in licences were the ones which interviewees had identified as being the most readily available. (It may of course be that the Parole Board was tailoring its choice of additional requirement to the

<sup>81</sup> In four of the 50 cases, the Board made it a condition that the licensee reside at specified address. This has not been included in the table as it does not involve community-based services per se. Nonetheless it would be the

services which it knew were most likely to exist - if a broader range were available in all areas, then it may be that the nature of the Board's additional requirements would correspondingly expand.)

Given their lack of knowledge about the process of supervision, it was not surprising to learn that Parole Board interviewees often did not know whether the additional requirements that they specified in *parole* licences were ever put into practice. (As noted above, the Board received regular supervision reports on life licencees and, as a consequence, were more able to gauge the extent to which its expectations of supervision were - or in some cases were not - being fulfilled). Unless a case was returned to the Board by the appointed supervising officer, however, there was a general belief that the additional services were indeed available and that the terms of the licence could, in principle, be adhered to. During the fieldwork period no such cases were returned to the Board; suggesting that the links between the Parole Board and social work departments in particular were operating in a positive manner.

#### *Supervision and Services: Reasons Given for Outcome*

During the observation period the presence or absence of community-based services and supervision was an explicit reason given for outcome in 39 cases (13% of out of 290 relevant decisions), all determinate sentence prisoners referred for consideration of release on parole.<sup>82</sup> The decisions made on these cases indicate that the Board considers that community-based services may be particularly important for offenders coming to the end of a long sentence to assist them to reintegrate into the community, sex offenders on release into the community and a small number of high risk cases at final review ("on-balance" cases).

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expectation of the Parole Board that the supervising officers in these cases would monitor the licencees behaviour quite rigorously in this regard.

<sup>82</sup> Of these 39 cases, 26 form a part of the 50 cases (described in the section above) for which the Board inserted additional requirements into the parole licence. The insertion of additional requirements into the licence frequently did not feature in the reasons given for outcome (as happened in 34 of the 50 additional requirement

Services and supervision featured in two distinct ways in these cases: firstly cases where the Board considered that the prisoner would benefit from a period of social work supervision (12 cases); secondly cases where the availability of a social work resource (or other specialist service provided by the independent sector) was a key element in the decision whether (or not) to recommend release on parole (23 cases). In four cases both reasons were given.

**TABLE 6.3 REASONS FOR OUTCOME**

Reason	Number (n=39)
Benefit from Supervision	12
Availability of Social Work Resource	23
Both	4

*(a) Benefit from Supervision*

The Board gave two reasons as to why cases would benefit from social work supervision: the period of supervision was considered essential as a means of *risk management* (this includes the four cases in which consideration of the availability of social work services was also an important consideration); the period of supervision was recommended to assist the prisoner to *re-integrate into the community*.

Cases where a period of supervision was considered to be necessary in order to minimise the risk of re-offending, were those of prisoners at final review, who had either failed to address their offending behaviour or addiction problems during time spent in custody, and/or because of the nature of their offence (mostly violent or sex offences). A short period on parole was recommended to ensure that the prisoner was released to some form of control rather than being released unconditionally at their two-thirds of sentence date.

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cases). Indeed they were often only put in as an after-thought - "belt 'n' braces" as one interviewee described them - once the decision to recommend release had been taken.

"Release ...benefit from supervision, it is essential in the public interest, risk of re-offending."

(Transcript: decision no. 53, sex offence, long sentence, at final review.)

"- In prison he gives the impression of knuckling down but we've not seen any change in attitude towards his wife (the victim).

- I share your anxieties but it's for the benefit of all that he goes out with supervision rather than not.

- He would respond well to social work."

(Transcript: decision no. 56, violent offence, long sentence, at final review.)

Cases where social work supervision was intended to assist the prisoner to re-integrate into the community, were those of prisoners nearing the end of extremely long sentences.<sup>83</sup> Supervision was considered necessary as the length of time which such prisoners had spent in custody was considered to have led to a deterioration in their links both to their families and to the communities to which they would be returning.

"The full four months (of parole available). He's coming to the end of his longest custodial sentence and supervision will help him to re-integrate into his home and into the community."

(Transcript: decision 73, violent offence, long sentence at final review.)

#### *(b) Service Availability*

In 27 cases the availability or lack, of a specified community-based resources was one of the main reasons given for outcome (these comprise the 23 cases in which the presence or absence of services was the only aspect of social work resources under

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<sup>83</sup> These cases comprise: two prisoners convicted of violent offences; and one prisoner convicted of Misuse of Drugs Act offences.

consideration and the four cases which the Board considered would also benefit from supervision).

In 18 of these 27 cases, social workers had both identified specialist resources in the community and made enquiries about the availability of such placements prior to the case coming to the Board. All of these cases received a positive outcome with 14 being recommended for parole and four for a forward release date. The types of services key to outcome and types of prisoner with which they were associated are summarised in the following table.

**TABLE 6.4 COMMUNITY-BASED SERVICES**

Service	Number (n=18)	Offence Violence (n=10) Sex (n=5) MDA (n=2) Dishonesties (n=1)
Alcohol Counselling	11	Violence 8 Sex 2 Dishonesties 1
Supported Accommodation	8	Violence 5 Sex 3
Drug Counselling	3	Misuse of Drugs Act 2 Violence 1
Action Plan (Unspecified)	1	Sex 1
Sex Offender Project	1	Sex 1
Psychological Counselling	3	Sex 2 Violence 1
Employment Training	1	Violence 1

Numbers add up to more than 18 as more than one service was mentioned in some cases

In the remaining nine cases social work services had not been put in place by the time the case was considered by the Board and this contributed to delays in release. The main reasons for services not being in place were where: the Parole Board identified a need for specialist counselling which had been overlooked by social workers (3 cases); social workers had assessed needs prior to the case coming to the Board but the placements had not been set up (3 cases); social workers had been unable to secure funding for a residential drug rehabilitation placement considered by the Board to be essential in terms of risk management (1 case); social workers

had experienced difficulties in arranging supported accommodation for “difficult” offenders (two sex offenders, one of whom was mentally disordered).

In six of these nine cases the Board recommended a forward release date rather than parole in order that social workers could have more time to arrange services. A further two cases were continued to give social workers more time to set up relevant placements. In one high risk case (that of a sex offender requiring supported accommodation) difficulties in setting up a placement contributed to the decision not to recommend parole at current review.

What do these decisions suggest about the links between the Parole Board and social work agencies?

With regard to social work *supervision*, there is an expectation on the part of the Board that supervising officers will be able to deliver the required reintegrative or controlling (conceptualised as risk management) aspects of parole supervision (the emphasis on one or other of these aspects, depending on the nature of the case). The Board, however, would appear to be taking this decision more in the hope, rather than in the certainty, that these expectations will be met. The lack of knowledge regarding community-based supervision indicates that (at least at the time at which the fieldwork was conducted) there was rather a fragile link between the Parole Board the local authority social work departments.

Moving on to social work *services*, a much stronger and positive link between social work and the Parole Board was demonstrated, with two-thirds of relevant decisions resulting in uptake by the Parole Board of the package of services put together by social workers prior to the meeting. In only a minority of cases did lack of identified services-lead to delays in release (through forward dates rather than parole on due date, or continuation), with only one case receiving a decision not to release.



To conclude this section, both interview and observation data indicate that linkages between community-based social work and the Parole Board have been characterised by a degree of both negative and positive relationality. Where breakdowns in linkages have occurred (negative relationality), this again would appear to have been precipitated by structural and cultural filters within the system (in respect of local authority resistance to, or skewing of, aspects of the National Standards framework). Although the data do indicate some positive linkages, such linkages appear to be quite fragile in nature, with decisions on additional requirements or aspects of supervision taken in the hope rather than sure knowledge that the requisite aspects of social work services could be made available.

#### Information in Decision-making

I now want to turn to the impact of information in decision-making. As indicated in the previous chapter, the Parole Board is dependent upon the information provided in the parole dossier or recall papers when making decisions in individual cases. The dynamics of looping are such that the Board sifts and reconstructs this information around the thematics of its system of signification.<sup>84</sup> Nonetheless, I wish to suggest that the materials provided to the Parole Board do delimit the nature of the narrative or story that can be told about a particular case, in two inter-related ways.

Firstly and most obviously, the materials in the dossier or recall papers set out the “facts” or raw data of the case with which the Board has to work: they therefore set the boundaries of the potential narrative. As was mentioned in chapter 5, at the time at which the fieldwork was conducted the dossier was the only source of information it had on parole cases (now prisoners have the opportunity to be

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<sup>84</sup> According to autopoietic systems theory in general, the dominant self-defined mode of communication of a particular system means that the system itself will perceive unreconstructed discourses from external media as

interviewed by a member of the Parole Board and a report of that interview is included in the papers for the meeting at which the case is to be considered). Rarely during the observation were decisions continued for further information (this occurred in only 17 or 5% of the 345 decisions made). The Parole Board therefore generally worked with the materials it had before it.

Secondly the materials, themselves, are the result of a process of information gleaning undertaken by other agents within the system (such as the police, social workers and prison officers). As a consequence, the quality of the information provided to the Board is dependent on the skills of these agents both at searching out relevant information and in making the required assessments.

It is in both of the above respects that there is a chain of dependency running from the Parole Board, through the dossier, to the agents preparing the reports. This chain is, to some extent, an example of positive relationality (the presence of strong and effective linkages): I would also suggest that in practice, however, there can be a reverse (negative) dimension to the chain. This occurs for example where there are gaps in the dossier which have the potential to skew the information provided. In order to demonstrate this I am going to examine the *social work* contribution to the parole dossier, as evidenced by the interview, dossier-sample and observation data.

#### *(i) Social Work Parole Reports: Quality*

The interview data suggests that there is a close correspondence between the Board's requirements for information and the National Standards for prison and home-circumstances reports.

There was consensus amongst Parole Board interviewees that the key purpose of the prison social work report should be to provide information about the prisoner's plans

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"noise". Systems have a tendency to rework ideas according to the imperatives of their own self-defined discursive

for release; their progress in custody and the extent to which they had addressed any significant problems, in particular whether the prisoner had addressed addiction problems or other behaviour associated with offending. The report was identified as one of the main sources of information on the level of risk which a determinate sentence prisoner posed, or level of progress demonstrated by a lifer prisoner. All of these types of information come within the scope of the of National Standards (see chapter 4) and according to the Board's system of signification are the key components of a risk or progress assessment.

Parole Board interviewees expectations in respect of home circumstances reports also accorded with the requirements of the National Standards, the key purpose of such reports being identified by interviewees as providing information on: the suitability of the release address; an assessment of family relationships and the family's likely response to supervision of the prisoner; information about the prisoner's release plans, including services and supervision which social work could offer to meet the prisoner's needs; and to assist in making assessments of the risk of re-offending in the case of determinate sentence prisoners. Again all of these aspects come within the ambit of the National Standards.

The reports in the dossier sample would suggest, however, that the Board does not always receive reports which meet both its requirements and those of the National Standards. With respect to prison social work reports in the sample: while over half of the reports did include assessments of response to custody (66%) and the offender's attitude towards the offence (59%), only one half of the reports included a risk assessment, and less than half included an assessment of addiction problems and the prisoner's attitude towards their release plans. Similarly with regard to home circumstances reports, while a high percentage of reports included some assessment of the level of support the prisoner would require on release into the

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practices (see chapter 1).

community (73%), only around two fifths included a risk assessment or an assessment of the suitability of specialist services in the community, with a mere 10% including an assessment of the prisoner's likely response to supervision. The types of assessment provided are summarised in the following two tables.

**TABLE 6.3 PRISON SOCIAL WORK REPORTS: ASSESSMENTS**

<b>Assessment</b>	<b>Percent</b> (n=68)
Personal Circumstances	72 (49)
Response to Imprisonment	66 (45)
Attitude towards the Offence	59(40)
Risk of Re-offending	51(35)
Services Available on Release (Mentioned as part of an assessment of need)	50(34)
Response to Previous Supervision	46 (31)
Substance Misuse or Gambling Problems	46 (31)
Employment Prospects or Use of Leisure	34 (23)
Family or Other Significant Relationships	26 (18)
Attitude towards Sentence	24 (16)
Attitude Towards Release Plans	10 (7)

Percentages add up to more than 100 as most reports included more than one type of assessment

Numbers in brackets: actual number of reports

One dossier in the dossier sample did not include a prison social work report

**TABLE 6.4: HOME CIRCUMSTANCES REPORTS: ASSESSMENTS**

<b>Assessment</b>	<b>Percent</b> (n=63)
Background	76(48)
Suitability of Specialist Resources	46 (29)
Environment	46 (29)
Family Attitude	38 (24)
Overall Assessment	
Support	73 (46)
Risk	40 (25)
Needs	32 (20)
Family Attitude to Supervision	10 (6)

Percentages add up to more than 100 because reports included much more than one type of assessment

Numbers in brackets: actual number of reports

Six dossiers in the sample did not include a home circumstances report

The gaps in information in social work reports, as described in the tables above, may be the result of the structural and cultural filters which I argued in chapter 4, have served to reconstruct social work policy as it has been put into practice. To recap social workers did not put a number of the National Standards into practice in report writing due to lack of resources (manifested in heavy workloads and the inability of social workers to access relevant information on which to base assessments) and cultural resistance aspects of the standards. These findings provide further illustration of my earlier argument that the linkages between the Parole Board and social work, may be shaped by cultural and structural filters. This can happen in a reverse or negative fashion: with the absence of information having the potential to skew/shape any assessments made by the Board

### *(iii) Social Work Parole Reports and Decision-making*

I now want to explore the extent to which the quality of social work information impacted on the observed decision-making practices of the Board.

During the observation period the quality of prison social work and home circumstances reports was rarely an *explicit* factor in decision-making.<sup>85</sup> With respect to prison social work reports, comments on quality were only made in 17 (6%) out of 290 relevant decisions. In three of these decisions the quality of the prison social work report was singled out for praise, mainly in respect of the social worker's assessment of the prisoner's progress and efforts to develop a suitable release plan. However in the other 14 decisions the Board made reference to the

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<sup>85</sup> Despite the gaps in information in dossier sample described above, during the observation none of these particular cases were continued for further information. It would appear that the Board was making decisions on the basis of what its own Members would consider to be fragmented and inadequate social work information. It is of course possible that information missing from social work reports was included elsewhere in the dossier (for example information on family circumstances), but the *professional assessment* of social work, which the Board clearly set great store by (see chapter 5), would not be there. This may account for the fact that a high number of these cases (59 or 86%) were not recommended for release (as indicated in chapter 5, a positive assessment from social work in the face of negative assessments elsewhere in the dossier had the potential to result in a positive recommendation from the Parole Board).

poor quality of the report. This was mainly where reports had failed to include information on the prisoner's previous response to social work supervision and/or efforts to address offending behaviour (10 decisions), or where the reports did not indicate the prisoner's plans for release (4 decisions). Importantly, however, the poor quality of information had a direct impact on the outcome of only three cases which were deferred in order that the prison social worker could have more time to provide the required information. In the other 11 decisions the poor quality of the prison social work reports did not impact directly on outcomes as there was sufficient information in the social work report and elsewhere in the dossier to assess the level of risk posed by the prisoner.<sup>86</sup>

With regard to home circumstances reports, reference was made to quality in 23 (8%) out of 290 relevant decisions. In seven of these decisions the Board commented on the high quality of the home circumstances report, mainly because the reports included a well-developed release package (four decisions) or the assessments which the report provided were considered to be particularly helpful (three decisions). In the other 16 cases the Board commented on the poor quality of the reports. This was generally where the reports provided inadequate information about the level of family support which the prisoner would receive on release (11 decisions) or about other aspects of the release environment. However the poor quality of these reports directly impacted on the outcome of only five (2% out of 290) decisions. These cases were deferred in order that community-based social workers could have more time to prepare a detailed and better researched report.

What do these findings on information and decision-making then suggest about the linkages between the Parole Board and social work? The very small number of cases which were deferred to obtain better reports, would suggest that the Parole Board generally has sufficient information before it to make the necessary assessments.

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<sup>86</sup> In five cases a negative outcome was given as the prisoner was considered to be at too high a risk of re-offending or had made insufficient progress to warrant parole; in 6 cases a release or a forward release date was

Nonetheless the analysis of the dossier sample suggests that the Board is not receiving high quality information (in terms of the Board's own expectations), with social work reports often providing fragmented and hence limited accounts of the offender and his or her circumstances. These gaps in information circumscribe the narrative that can be told about a particular case, narrowing the range of factors which the Board is able to sift and weigh up when assessing risk or progress. (For example missing information regarding the prisoner's response to drug counselling in prison, would mean the absence of a key piece of information required to assess risk.) This is an aspect of negative relationality in practice - where the absence rather than the presence of a particular phenomenon shapes and constrains the activities of a particular agency.

#### Liaison and Input to Policy Development

Finally I want to turn to the relationship between the Parole Board and other administrative bureaucracies in the parole system with respect to liaison and input to policy development.

At the time at which the fieldwork was conducted there were no formal mechanisms for regular liaison meetings between the Parole Board and other agencies, although Board members did have the opportunity to raise issues with representatives from both SWSG and SPS at their General Purposes Meetings.

A common perception amongst Parole Board interviewees was that they were working in a "black-hole" with respect to parole policy development. Although they acknowledged that Board members were usually consulted about policy initiatives which had implications for parole, most considered that their views carried little weight. This accords with the perspective of many criminal justice workers, that "liaison" often amounts to little more than one agency (in the case of parole either SPS or SWSG) telling another (the Parole Board) what was going to happen - rather

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recommended as other information in the dossier indicated a number of positive aspects of the case.



than there being genuine consultation and collaboration over policy development (see McAra 1998a). This was exemplified by the comments of one interviewee who pointed out that much of the Parole Board's contact with social work administrators was through social work circulars rather than face to face discussion.

It was evident that interviewees often lacked information about developments in services both in prison but more especially in the community. A common view was that the Board had to rely on individual Board members who had worked in the prison service and/or social work departments for information rather than being able to rely on the agencies themselves.

The one aspect of policy over which interviewees did feel they had some control over was in respect of information provided to the Board. Inadequate reports could be sent back for amendment and decisions delayed until the requisite information was provided. The reports provided a conduit for communicating to relevant agencies the Board's requirements for information and, in certain cases, their expectation of services.

"If they're poor reports we send them back and tell the managers what we want: more evidenced information not a dreamed up package, evidence of contact between prison social workers and those in the community, information on services." (Parole Board Member)

Interviewee responses suggest, however, that this conduit operated in a one way fashion with Board members using it to relay their expectations to social work or other agencies, rather than viewing it as an opportunity for agencies to communicate their expectations to them.

"No matter what is said in reports about wonderful services in the community or how National Standards are going to improve risk management, if the offender has not demonstrated the motivation to change then they're not going to get out. We won't be persuaded by reports alone."  
(Parole Board Member)

All of these findings suggest that the Board operates in a rather isolated manner in respect of input to most aspects of policy developments as they relate to parole, being the recipient rather than instigator of changes which are wrought within the system. This works back on their customary practices by leaving them relatively powerless to effect changes in services which would facilitate decision-making and which would enable their intentions, in certain cases, to be fully realised in practice. Any control over policy which does exist, remains at the level of information provision. Interviewees perceived communication with external agencies, over the information which the latter provided to the Board, as a means of effecting change in reporting policy, a "mono-modal" rather than collaborative method of communication.

### Implications for Penal Dynamics

Having reviewed the linkages between the Parole Board and other agencies, I now want to turn to a discussion of their implications for an understanding of penal dynamics.

The evidence suggests that the process of rooting has the potential to inhibit (by disrupting or slowing-down) the self-reflexive momentum of the Board's customary practices. This occurs in particular, where the linkages between agencies operate in a reverse or negative relational fashion. Gaps in both services or information have the capacity to impede the intentions of the Board, delaying or skewing decision-making outcomes in a manner at odds with the conventions governing the day to

day practices of the Board. By contrast positive linkages between the Parole Board and other agencies can serve to reinforce and reproduce the self-reflexive dynamics of the Board's system of signification (looping), by facilitating the realisation of the Board's decision-making objectives.

In chapter 5, I characterised the Board's system of signification as a sub-system of communication which operates at the interstices of the systematic relationships between the Parole Board and other institutional and discursive structures within the broader penal system. The evidence from this chapter suggests that the relationship between the sub-system and the broader system is a rather complex one: at times the Parole Board is able to assume its own self-defined and self-reproduced trajectory, at times it is tightly constrained by other structures. It is the precise interplay between such looping and rooting processes which will determine the character of Parole Board practice at any particular juncture: the dynamic equilibrium between the two providing for systemic reproduction. In terms of the model of penalty set out in Diagram 5.1, this suggests that immanent within reproductive processes are both hypercyclical and inter-bureaucratic dynamics. The former (represented by the circle in the diagram) has the potential to elevate the sub-system above inter-bureaucratic dynamics, the latter (represented by the linkages in the box labelled "Penal Bureaucracies") the potential to hook back or restrain the reflexive tendencies within the sub-system.

The relationship between rooting and looping suggests that the conduits through which transformative impulses can work through to the Board may be rather limited in scope. As was argued in chapter 5, transformation of Parole Board practice would require a breach in the reflexive dynamics under-girding the Board's system of signification. The irony of rooting is that the system of signification is most vulnerable when there are breakdowns in linkages, a moment when the Board is most isolated from potential agents of transformation and a moment at which,

paradoxically, the sub-system of communication should be at its most stable. As the evidence suggests, breakdowns in linkages have occurred in only a minority of cases, at the margins of decision-making. Were breakdowns to become a more systematic aspect of decision-making (perhaps through transformations in prison or social work policy) then the strain between the customary practices of the Board and what can be realised in practice, may become too great for former to be sustained. In such circumstances a transformative moment may become a possibility.

The complex nature of these relationships is ably demonstrated in respect of social work policy and parole. As was mentioned, the aim of social work policy is to persuade the Parole Board to release higher risk prisoners on licence at an earlier stage (an aim which has been resisted by the Board). The conduits used by social work managers to persuade the Board comprise both social work parole reports and mechanisms for liaison between social work managers and the Parole Board. As was seen, where reports are of good quality then the Board reconstructs the information contained within them according to the thematics of its own system of signification. Poor quality reports by contrast are used by the Board as a conduit through which to effect changes in social work reporting policy. In neither case has the social work report precipitated changes in the Board's dominant mode of thinking.

Mechanisms for liaison might be seen as providing greater opportunity for persuasion, as they should provide a forum in which social work managers can seek to challenge and win over, what in their view would be, recalcitrant Board members. According to the imperatives of social work policy, liaison should facilitate inter-agency co-operation and collaboration. In practice however, liaison mechanisms have not worked well. In some respects this is due to a perception of liaison shared by many agencies within the penal system (including social work and the Parole Board), that effective liaison occurs only where the agency concerned has the ability

to make another agency comply with its agenda (mono-modal mechanisms of communication). This is illustrative of the struggles for power and/or control which, I argued in chapter 4, are a characteristic feature of penal dynamics. A transformative moment would require a shift in this perception of liaison, with a move away from insularity and mono-modal mechanisms of communication towards genuine consultation and joint work.

### Conclusion

In this chapter I have attempted to demonstrate the ways in which the Parole Board is rooted in the wider penal system through its dependencies on certain key agencies. The practice of the Parole Board is under-girded by the equilibrium that is struck at certain junctures between looping and rooting processes. While looping contains within it the potential to inhibit transformative impulses, rooting contains the potential to precipitate penal change. The latter however is dependent on the manner in which power operates through the system, both in respect of the cultural and structural filters which can precipitate breakdowns in the linkages between agencies and in respect of the extent to which agencies themselves are able retain a degree of insularity in their relationships with others.

This chapter concludes the three case studies within this thesis. In the final chapter I am going to review the implications of the case studies for the model of penal relations set up in chapter 2 and to elaborate more fully the parameters of a relational theory of penalty.

## CHAPTER 7

### CONCLUSION

#### TOWARDS A RELATIONAL THEORY OF PENALITY

##### Introduction

In chapter 2, I set up a hypothetical model of the penal realm qua system. This model was intended to show the multi-relational and multidimensional characteristics of the system. In that chapter, I argued that the different dimensions or sites comprising the system operated as a system of communication which required to be understood at both a symbolic and operational level. I further claimed that the model was in many respects akin to an eco-system in which there was both a high level of interdependency and also struggles for power and control between each of the sites within the system. The implications drawn from this model were that an understanding of systematicity in the penal realm required detailed examination of *power relations* as they operate over and through the system (including an understanding of cultural filters and positive and negative linkages between elements of the system) and the manner in which *external processes are mediated* by the system.

In this final chapter, I want to draw together the main findings of the case studies with the aim of refining the model and elaborating more fully the constituent elements of a relational theory of penalty. In order to do this I am going to revisit the twin themes of the thesis: theorising systematicity and challenging explanations of transformation. As my point of departure, I'm going to examine the implications of the case studies for an understanding of power and penalty and the relationship between external processes and the penal system. I will then explore the manner in which the relational model of penalty conceptualises transformative processes. The thesis will end with a brief review of the epistemological and methodological issues which flow from relational theory.

## Theorising Systematicity

### *(i) Power and Penalty*

The empirical data support a vision of the penal system as a dynamic eco-system rather than a static entity, with such dynamism being fuelled by struggles for power and influence between key sites. Hierarchy between these sites is dictated by both extra and intra systemic factors.

### *Extra-systemic Factors*

With regard to extra systemic factors, the evidence suggests that political exigencies have a key role to play in determining the relative balance of power within the system (as shown in Case Study A). At times when Governments lack popular support power accrues to elite policy networks within the system. Conversely, when Governments enjoy a high level of legitimacy Ministers at the apex of the penal system have greater control and influence. Importantly the power of either elite policy networks or Ministers extends only as far as symbolic representations within the system (official policy discourse). This is because of the manner in which intra-systemic factors impact on power relations.

### *Intra-systemic Factors*

The evidence suggests that power accrues to those agents and/or bureaucracies within the system who or which are able to control intra-systemic discursive practice. As indicated in Case Study B, it would be difficult for one agent or bureaucracy (such as Ministers or policy elites) to have complete control over such practice (to achieve a “hegemonic moment” as described in chapter 4) given the manner in which the system is internally differentiated.

#### *(a) Cultural Filters*

As was found, the system is internally differentiated by a series of filters both cultural (at the level of communication) and structural (at the level of institutions) in character. These filters have a key role to play as linkage mechanisms within the system, more particularly as conduits for communicating intra-systemic conceptual vocabularies (as was found in Case Study B). The evidence indicates that these filters sift and reconstruct conceptual vocabularies enabling bureaucracies to resist the imperatives of other agencies within the system. One of the consequences of this is that the symbolic discourse of the policy frame becomes a resource for agents working within the system, a resource which is improvised upon in the course of the day to day transactions (as indicated in Case Study B).

#### *(b) Discretionary Space*

The existence of these filters is predicated, in turn, on the existence of, what I have termed, discretionary space within the system. Discretionary space is the physical and conceptual space carved out for a particular bureaucracy by both the symbolic discourse of the legal and policy framework and also the broader institutional function of the bureaucracy within the penal system itself. The existence of this space provides a bureaucracy with a potential bulwark against other agencies within the system: rendering it the capacity to act as a filter, resisting or slowing down particular policy initiatives (as was seen in case studies B and C).

#### *(c) Sub-systems of Communication*

Discretionary space has a further role to play in determining the relative balance of power in the system as it provides the preconditions for sub-systems of communication to evolve. The evolution of such sub-systems is dependent upon the manner in which particular bureaucracies choose to colonise their discretionary space and on the degree of positive and negative relationality between bureaucracies. Negative relationality (breakdown in linkages) can inhibit the control a bureaucracy



enjoys over its space and consequently over the likely systemic effects of its practice. (This was demonstrated in Case Study B with regard to the impact of failures in prisons policy on the role of social work in parole and in Case Study C with regard to the impact of failures in social work on the practice of the Parole Board.) Conditions of negative relationality weaken, thereby, the power of bureaucracies and impede the development of sub-systems. By contrast conditions of positive relationality (strong and efficient linkages), serve to empower bureaucracies, shoring up their control of space and supporting the evolution of sub-systemic dynamics.

Where sub-systems of communication do evolve then these can operate in an autopoietic manner, consistently reconstructing themselves according to their own self-generated imperatives, driven by the dynamics of looping (see Case Study C). This self-reflexivity is, however, highly fragile and predicated upon the continued existence of the structural space within which the sub-system is physically and conceptually located. At times when this space is subject to the turbulence of negative relationality, the sub-system loses its reflexive qualities and becomes hooked back or rooted into the broader system.

What all of these findings suggest, is that the exercise of power within the penal system is almost always in the process of accomplishment, rarely complete. While the system can at certain junctures achieve a degree of equilibrium, the evidence suggests that it is prone to disruption and turbulence, through struggles for control over policy agendas and operational practices. The findings also suggest that penal dynamics are characterised as much by paradox as by rationality or coherence, in particular with regard to the dynamics of reflexivity within the system and the processes which lead to systemic stability or turbulence.

*(d) The Paradox of Reflexivity*

With regard to reflexivity, as was stated, internal boundary mechanisms create the physical and conceptual space (discretionary space) within which sub-systemic modes of communication can develop. A symbiotic relationship exists therefore between intra-systemic boundary mechanisms and the looping, autopoietic dynamics of these sub-systemic modes of communication. This is indicative of what I have referred to as the darker side of systems, that reflexive modes of communication, which are essentially self-constructing and self-reproducing, are nonetheless predicated on the existence of factors external to the mode of communication itself.

*(e) The Paradox of Stability*

Turning to processes leading to stability or turbulence, the evidence indicates that looping or reflexivity is inherently a stabilising feature of sub-systems, protecting them from intra-systemic turbulence. The stability of sub-systems, has, however the potential to create turbulence within the wider system, particularly at junctures where the autopoietic trajectory of a sub-system uncouples it from the broader system, rendering it remote and dysfunctional. Instability therefore arises out of the very features of systems which promote stability.

These paradoxes stem largely from the dialectical nature of penal dynamics. Taken together, the findings of the case studies suggest that there is a continual tension within the system between the imperatives of differentiated power structures both from within and out-with the penal system (the functionalism dimension of system) and the tendencies for bureaucracies in the system to develop looping practices (the autopoietic dimension of system). While the dynamics of one or other of these may come to dominate the system from time to time, each is always immanent within the system, the dialectical interplay between the two being key to an understanding of penal relations and the manner in which such relations evolve and are reproduced.

### *(ii) The Mediation of External Processes*

Turning now to the mediation of external processes, the evidence from the case studies suggests that the relationship between the penal system and its immediate social and cultural environment is a complex one. Although, as mentioned above, external processes can impact on the relative balance of power between sites within the penal system, the findings indicate that such processes are unlikely to have a direct causal effect on penal policy or practice. This is because of the manner in which these processes are subject to interpretation by agents and bureaucracies within the system. Their effect will therefore be mediated by degree of significance attached to them by personnel within the system (as was found in Case Study A).

One of the consequences of this interpretative dynamic is that external boundary mechanisms of the system are likely to vacillate between openness (where the system is at its most receptive to extra-systemic cultural and political processes) and closure (where boundaries function to repel extra-systemic imperatives). A key question then becomes under what conditions the system assumes either an open or closed trajectory. The evidence from the case studies suggests that the answer to this is again complex. Rather than openness and closure being diametrically opposed, openness can, at certain junctures, function as a precondition of boundary closure. This is exemplified by the findings of Case Study A, which highlight the manner in which the dynamics of civic culture have served to shore up and sustain penal welfarism, enabling the penal system to close itself off from broader, potentially transformative impulses. This in turn suggests that a similar dynamic may be at work between the penal system and its social environment as that between a sub-system and its wider systemic environment, described above. The penal system could be said to colonise a conceptual and physical space carved out by political and legal imperatives as well as by the broader social functions of penality (both latent and overt). Civic culture has therefore functioned to provide a

conceptual space within which welfarist penal culture has been able to flourish. This mutuality between civic and penal culture is indicative of a degree of positive relationality which, as was noted in respect of sub-systems, facilitates the evolution of reflexivity and normative closure. Where such mutuality breaks down (under conditions of negative relationality) then this is likely to lead to strain between the penal system and its environment, creating (as was argued in Case Study A) the preconditions for transformation.

### Challenging Explanations of Transformation

What then are the implications of the above findings in respect of systematicity for an understanding of penal transformation?

As noted in chapter 2, the literature on transformation suggests that transformation is precipitated primarily by extra-systemic factors (for Feeley and Simon the growth of an underclass of permanently marginalised groups, for Garland a crisis of governance precipitated by persistently high crime rates and for Bottoms changes in the features of late capitalist societies, such as the disembedding of social relations, shifts in the pattern of work and technological developments). The findings of the case studies challenge this account of change, suggesting that transformative processes have *both an extra and intra-systemic dimension*.

At the extra-systemic level, penal transformation is most likely to occur when strains develop between the penal system and its broader environment: when there is no longer a fit between penal culture and the broader social and cultural conditions within which the penal system is situated. The evidence suggests that there may be substantive time lags between shifts in social and cultural conditions and penal change, especially where there is residual extra-systemic support for penal culture (as has occurred in Scotland with the mutuality between civic and penal culture described above).

Extra-systemic factors have a further, more indirect, role to play in transformation. In Case Study C I argued that one of the key features of penal dynamics was the immanence of political will within the system; that Ministers, given propitious circumstances, had the *potential to impel major change within the system*. As noted above, Ministerial power is predicated on (extra-systemic) popular support. Where Governments enjoy a high level of legitimacy their ability to transform the system is enhanced, by contrast weakened Governments lack agency in this regard.

As was said, the impact of extra-systemic factors on penal transformation is highly contingent. This is because of the manner in which cultural filters in the system have the potential to reinterpret and reconstruct the particular impulsions to which they are subject. An understanding of transformation therefore requires detailed consideration of intra-systemic mechanisms through which penal systems are able to reproduce themselves.

The findings of the case studies suggest that penal systems reproduce themselves primarily through the competitive struggles for space between key sites within the system (Case Study B) and in the dialectical interplay between the looping (self-reproducing) and rooting dynamics which characterise the manner in which intermediate institutions function within the system (Case Study C).

With regard to internal competition, a transformative moment would require control over intra-systemic conceptual vocabularies. The evidence from the case studies suggests that a degree of structural inertia has been built into the system in the form of discretionary space which limits the extent to which any one agencies or agent could achieve such a hegemonic moment.

With regard to rooting and looping, the findings of the case studies indicate that where systems and indeed sub-systems achieve a degree of reflexivity then this can act as a brake on change. This was demonstrated in Case Study C in respect of the manner in which the Parole Board's system of signification has managed to sustain and reproduce itself and in Case Study A in the degree of reflexivity between civic and penal culture (mentioned above), both of which appear to have inhibited potentially transformative pressures.

Rooting processes by contrast have the potential to precipitate change by breaching reflexive dynamics, leading to breakdowns in linkages between different dimensions of the system. As noted in Case Study C, the irony of this process is that agencies tend to be at their most isolated from potential agents of transformation under conditions where such breakdowns occur.

What all of these findings suggest is that systems have a degree of structural inertia which makes them relatively resistant to change. Transformation is most likely to occur under conditions of extra or intra systemic strain: where tensions between the cultural practices of the system or sub-system and the physical and conceptual space within which each is located become too great to be sustained.

#### Epistemological and Methodological Implications

In this final section of the chapter I want to review the epistemological and methodological implications which flow from the relational model of penalty.

As indicated in chapter 1, one of the difficulties in studying systems lies in the appropriate level of analysis. To understand a system requires a macro level of analysis in which the commentator is able to stand above the system and study it as a whole. However exploring systemic linkages between the different elements which comprise the system involves quite micro level analysis. The relational model is

attempting to cut across these two levels by viewing each dimension as immanent within the other. In this regard it is akin to, what Merton would term, a theory of the middle range: a theory which according to Merton lies “between the minor but necessary working hypotheses that evolve in abundance during day to day research and the all inclusive systematic efforts to develop a unified theory that will explain all the observed uniformities of social behaviour, organisation and social change” (Merton 1968 pp39). As such it aims to cut across distinctions drawn between macro and micro sociological problems (Merton 1968 pp 68) and is open to empirical testing.

The implication of the relational model is that penal systems cannot be read purely at one level, that the key to understanding the characteristics of a particular system lies in the dynamic relationships that exist between the constituent elements of the system and between the system as a whole and the environment within which it is situated. The appropriate object of study is therefore *relationality* per se, with the nature and function of specific institutions and practices being understood primarily as the *effects* of systemic relationships. The research has shown that these relationships tend to be paradoxical in operation at both a macro and micro level. To account for such paradox, relational theory requires to draw on elements of both functionalist systems theory and autopoietic systems theory. Embracing paradox in theory and method requires an engagement with dialectics: exploring the interplay between factors which superficially seem contradictory but at a deeper level are the Janus faced elements of complex social phenomena.

## Conclusion

In the course of this thesis I have attempted to elaborate a model of systematicity in the penal realm: a model which can account for the complexities of intra-systemic relationships and the interplay between penal systems and their environment. The model has been evolved through a critique of the literature of transformation and

has been used to challenge explanations of penal change put forward in this literature.

The findings of the thesis would suggest that penal systems are quite turbulent phenomena. They contain a degree of structural inertia which makes them relatively resistant to change (particularly change impelled by extra-systemic pressures) and which makes their relationship with their physical and conceptual location one characterised by paradox and contingency. As such penal systems require to be studied through the epistemological and methodological gaze of middle range theory: a fully elaborated relational theory of penalty.



## **ANNEX 1**

### **CASE STUDIES: METHODS**

#### Introduction

This annex sets out the background to research on which this thesis is based, including access arrangements, and describes and discusses the methods used in the case studies. It concludes with consideration of key lessons learnt from undertaking the research, in particular the importance of triangulation of data sources and the need for methodological and theoretical reflexivity.

#### Background

As was mentioned in Chapter 1, the empirical research on which the case studies are based, builds on work undertaken for the Scottish Office Home Department evaluating the implementation of the National Objectives and Standards for Social Work Services and the 100 percent funding initiative (implemented from April 1991)<sup>87</sup>. In addition to myself, the research team was composed of researchers from the Social Work Research Centre, University of Stirling and the Scottish Office Central Research Unit.

The evaluation comprised seven studies on the following themes: the effectiveness of early policy implementation; strategic and organisational issues, sentencer and Parole Board decision-making and the process and outcome of probation and throughcare supervision. I was responsible for the design of the overall programme and for the conduct of the studies on early implementation and Parole Board decision-making. As part of the research access arrangements (see below), it was agreed that I could ask additional questions (to those included as part of the policy evaluation) at interview and make use of any data which I collected, for the purposes of my PhD research.

### *Access Arrangements*

Access negotiations with the agencies involved in the research were protracted, in spite of the fact that all of the agencies (including local authority social work departments, central government departments, the judiciary, and the Parole Board) had agreed to participate in an evaluation of the policy during the consultation phase of policy development. (Indeed in the first edition of the National Objectives and Standards for Social Work Services in the Criminal Justice System, there was a clear statement that research into the process of policy implementation was to be commissioned and that the results were to be used to increase the efficiency and effectiveness of social work criminal justice services, see SWSG 1991).

At the time at which the interviews with officials in Central Government were undertaken, I was working as a Senior Research Officer in the then Scottish Office Central Research Unit. While this contributed to the ease of accessing civil servants (anecdotally there was a belief amongst officials from Central Government that researchers could be better controlled if they were in-house researchers<sup>87</sup>), this made it more difficult to gain access to local authority employees (meetings with the Association of Directors of Social Work and with local managers highlighted a degree of suspicion and defensiveness on the part of local authorities as the research was putting their performance under scrutiny). It took around 12 months in total to agree each element of the research.

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<sup>87</sup> These studies were published in seven volumes, of which I authored two: McAra, L. (1998) *Social Work and Criminal Justice Volume 2: Early Arrangements* and McAra, L. (1998) *Social Work and Criminal Justice Volume 5: Parole Board Decision-making*.

<sup>88</sup> This control was most marked with respect to the dissemination of the findings. As a researcher bound by the Official Secrets Act, I could not publish anything which was not cleared by officials. Similarly these officials were able to comment on findings prior to publication and delay or indeed refuse publication if the findings were too sensitive.

## Methods

### *(i) Description of Methods*

The research for the PhD thesis involved a range of methods: documentary review (case studies A and C); interviews with a range of personnel who had a key role to play in aspects of the parole system (case studies B and C); and observation of the Parole Board (case study C). The choice of method was partly circumscribed by the Scottish Office funded programme of research (limitations of the methods are discussed in more detail below). Nonetheless the methods used in each case study did enable me to fulfil the aims and objectives of the PhD research in respect of penal transformation and theorising systematicity.

#### *Case Study A: The Policy Framework*

In order to explore the changing policy framework of parole, a review was undertaken of documents relating to relevant policy areas (i.e. social work; parole and early release policy; and prisons policy). This included an examination of White Papers; Acts of Parliament and Statutory Instruments; the reports of committees such as the Kilbrandon (1964) and Kincaid (1989) Committees; and the Annual Reports of the Parole Board for Scotland.

A literature review was also conducted of contemporary political and social culture in Scotland. As was indicated in chapter 3, this is a need for more research in this area and consequently the available literature was rather limited in scope. The aim of the literature review was to examine whether there were any aspects of Scottish political or social life which might go some way to explain the manner in which penal policy has evolved.

#### *Case Study B: The Process of Policy Implementation*

To explore the process of policy implementation, semi-structured interviews were conducted with those responsible for the development and administration of social

work parole policy in central government as well as social work practitioners responsible for the implementation of the policy on a day to day level. The aim was to garner the views of individuals working at different stages in the implementation process. (A limitation of the research is that I was not given access to interview local authority social work managers and thus a key stage in the implementation process has been omitted, as discussed in more detail below).

#### *(a) Central Government Interviewees*

The civil servants interviewed were: an official from the Criminal Justice Division (Head of Division); three officials from the Parole and Life Licence Division (comprising the Head of Division and two Principal Officers who were responsible for overseeing the release and supervision of, respectively, determinate and indeterminate sentence cases<sup>89</sup>); two officials from social work comprising a civil servant from the Social Work Services Group<sup>90</sup> (the Principal Officer responsible for the administration of social work criminal justice policy) and a member of the Social Work Services Inspectorate (an Assistant Chief Social Work Inspector who headed the team of inspectors responsible for overseeing the performance of social work criminal justice services).

#### *(b) Practitioner Interviews*

Four prison social workers were interviewed; one from each of the prison units covered in the Scottish Office funded programme of research. The prisons were selected to include a range of units: closed adult male establishment; young offenders institution; semi-open adult male establishment and a closed female establishment. The aim was to receive views from social workers working in very different contexts.

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<sup>89</sup> Three civil servants were interviewed because the senior civil servant had not been in post long when the interview was conducted. She brought two colleagues with greater experience of issues relating respectively to parole and life licence supervision.

Four group interviews were also conducted with community-based social workers from each of the Scottish Office research study sites<sup>91</sup>. The study sites were chosen to reflect areas of both high and low population density and to represent specialist and more generic forms of organising social work criminal justice services. Again the aim was to receive a range of social work perspectives from those working in different settings.

*(c) Themes Discussed at Interview*

All interviewees were asked for their responses to policy objectives; the model of social work practice informing the policy and their assessment of arrangements for implementing the policy (including facilitators and inhibitors of policy implementation). In addition interviewees were asked about areas of concern specific to their role in the parole policy process:

Civil servants were asked to comment on the development of strategic planning mechanisms and the national core data system for monitoring policy implementation. They were also asked about the effectiveness of liaison arrangements within central government and between central government and the local authorities.

Prison social workers were asked about: the preparation of prison social work reports; the impact of Continuity Through Co-operation on prison social work services and the impact of the policy on community-based services for released prisoners. Community-based social workers were asked to comment on: the preparation of home circumstances reports; as well the impact of the policy on services for, and supervision of released prisoners.

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<sup>90</sup> SWSG has now been disbanded (in 1999) in the wake of the newly constituted Scottish Executive. Its functions have been devolved to the Departments of Health (community care); Education (children and families) and Justice (social work criminal justice services).

### *Case Study C: Parole Board Decision-making*

The examination of Parole Board decision-making involved observational work, documentary analysis and interviews.

#### *(a) Observation*

Observation was undertaken of six Parole Board meetings which took place between January and March 1994. These meetings represent a quarter of the Board's annual business and in this respect the cases considered at the meetings reflect the range with which the Board deals. Transcripts (as near as possible verbatim) of the discussion at the six meetings were taken and the decisions taken at those meetings form the Observation Sample (n=345) in this study (see Annex 2 for further details of the sample).

#### *(b) Documentary Review*

In addition a sample of dossiers was extracted from the cases considered at the Parole Board meetings for further analysis. This sample comprises all cases discussed at the observed meetings from the four study prison units (n=69, the Dossier Sample, see Annex 2). The aim of the dossier sample was to cover the range of *case categories* [for example young adult offenders, lower and higher security classification prisoners] with which the Board deals. Key themes were extracted from the dossier for the purpose of comparing the assessments contained in the reports which comprise the dossier, with those of the presenting member of the Parole Board as set out in the observation transcripts(see Chapter 5).

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<sup>91</sup> The interviews were conducted with a maximum of six social workers in each study site, although the numbers did vary from site to site.

### *(c) Interviews*

Semi-structured interviews were conducted with six out of the, then, fourteen Parole Board members selected to represent a range of views according to the statutory requirements of Board membership<sup>92</sup>.

During interview Parole Board members were asked to comment on the decision-making patterns identified during the observation. Additionally they were asked about: their aims in making decisions to release prisoners on licence; the impact of national standards on prison social work and home circumstances reports; the quality of prison based and community based social work services and the impact of these on decision-making; the effectiveness of formal and informal liaison arrangements between the Parole Board, local authorities and Central Government and their impact on decision-making.

### *(ii) Discussion of Methods*

Having described the background to the research and the methods used, I now want to turn to a discussion of the limitations of these methods and the nature of the data derived from them. I'm going to examine (i) central government control of the research; (ii) limitations of interviews; (iii) problems associated with observation; (iv) difficulties in tracking change in the penal system; (v) broader limitations of the data.

#### *Central Government Control*

It has been suggested by commentators on social science methods that one of the dangers of undertaking social research both on and for central government is that powerful interests within central government will try to influence how data is collected, what findings are disseminated and in what context (see for example Jupp

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<sup>92</sup> By statute the Parole Board requires to have amongst its members: a registered medical practitioner who is a psychiatrist; a person who holds or has held judicial office; a person with knowledge and experience of the supervision or after-care of prisoners discharged into the community ( in practice this is usually a social worker); a person who has made a study of the causes of delinquent behaviour or the treatment of offenders (usually an academic with a background in criminology). In order to preserve the anonymity of the research subjects, I have not specified what their backgrounds were.

1985). This accords to some extent with Smart's view that research strategies which are used "in the service of the state" are necessarily subverted by administrators (Smart 1990)<sup>93</sup>. While I would tend to disagree with Smart's rather extreme view, it is important that researchers working for central government retain research integrity and resist as far as possible any political interference with the research. From my own experience working both within central government as a manager and commissioner of research and as a research contractor out-with government, resistance is relatively easy in respect of the technical aspects of research - for example instrument design and data analysis. Difficulties can arise, however, with regard to the interpretation and dissemination of the results.

In the case of my own research there was clearly great scope for central government control particularly through the advisory group which was set up to oversee the Scottish Office programme of research<sup>94</sup>. The remit of the Advisory Group was to scrutinise each aspect of the research, including research instruments and the manner in which the findings were interpreted. Nonetheless I would submit that there was little if any interference with the research which I conducted (other than delay in the publication of the first research report produced, McAra 1998a), and comments made on research instruments were helpful rather than sinister.

### *Limitations of Interviews*

The potential for powerful interests to skew the research has particular resonance when conducting interviews with senior civil servants. The access afforded to me by central government in this regard was unprecedented within Scotland at that time, and I had to take care that officials did not use this as an opportunity to press a particular "party line". Only one of the interviews with officials caused difficulties in

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<sup>93</sup> Smart's argument is linked to her concerns about the relationship of feminism to criminology (the latter of which she describes as "atavistic man", see Smart 1990).

<sup>94</sup> The Advisory Groups comprised representatives from: the policy divisions involved in the administration of the policy (SWSG, SWSI); divisions who were customers for services (Scottish Prison Service, the Criminal Justice Division; the Parole and Life Licence Division, see chapter 4); and the Central Research Unit.



this regard. The administrator from the Criminal Justice Division was extremely cagey in response to questions on facilitators and inhibitors of policy implementation: his views amounting to little more than a rehearsal of key policy tenets. (Data derived from this interview have not been used within the main body of the thesis.) Other interviewees, by contrast, spoke more freely (as demonstrated in the findings described in chapter 4).

Importantly I did not conduct interviews with local authority managers (this did not form part of my Scottish Office research brief). By only interviewing those working in Central Government, there was a danger that the data derived from the interviews discussed in chapter 4, would give a one-sided view of policy implementation processes and in particular a one-sided view of local authority performance. However it was possible to triangulate the findings of my interviews with the findings from other studies in the Scottish Office funded research. As part of the study on strategic and organisational issues, other researchers from within Central Government and the University of Stirling conducted a series of interviews with local authority managers. The findings of their research (see Brown et al 1998) confirm the data presented in chapter 4.

The difficulties in determining whether interviewees are able or willing to give accurate accounts of their practice was replicated to some extent in the interviews with Parole Board members. It is clear from other research within the field that criminal justice decision-makers often claim that they make decisions in a particular way and then make them in quite a different way in practice (see McAra 1998a, Creamer and Williams 1989). In order to assess the extent of this difficulty in my research, the Parole Board interview data was triangulated against the observation data. It was evident from this process of triangulation that the presentations and recommendations made by the interviewees themselves during observation, together

with the more general patterns of observed decision-making, accorded with their perspectives on decision-making discussed at interview.

### *Undertaking Observation*

Observational work has its own pitfalls. In the case of "overt observation" (where the research subjects are fully cognisant with the aims of research being undertaken and the presence of the researcher), the researcher has to be aware that their own presence may lead participants to behave in a different way than they would under non-observed conditions. This can be particularly problematic at the start of fieldwork, due to the unfamiliarity of the research process. Once research subjects become used to the presence of the researcher they may not feel as self-conscious and continue to behave in routine ways (see Deutscher 1977, Jupp 1989, Rose 1990).

The Parole Board may be less prone to observer "contamination", given the speed with which business had to be conducted. As stated in chapter 5, the Board spent on average 4 minutes per decision. This four minutes comprised a presentation of salient "facts" about the case by the presenting member and, in some cases, a short discussion by the full Board. The need to keep business moving suggested that the minds of the Board were very much focused on the cases in hand rather than how they might be perceived by the observer.

One form of checking whether there was any researcher contamination was through examination of the minutes of meetings, which record the "official" reasons given for outcome in individual cases. If the reasons given for outcome during the observation period seemed to be at odds with broader statements and trends, then this might be indicative of some researcher impact. I had access to minutes of previous meetings as an extract from the minutes was always included in the dossiers of prisoners who had previously come before the Board. Examination of the themes in these extracts suggest little change in practice, with the themes of progress, risk, trust

consistently framing outcomes. There are of course some limitations in using the official record of meetings in this way. It was clear that the minutes were shaped according to the Board's own presentational rules (see Smith and Gray 1985) as during the observation period the reasons given in the meeting did not always accord *in detail* with the officially recorded minutes. Nonetheless this was the only form of check available.

A further difficulty in undertaking observation relates to the "outsider" status of the researcher and the consequent danger that he or she may not fully understand the meanings of the interactions observed. This difficulty was overcome in my research by conducting the interviews with Parole Board members after the initial analysis of observation data. In the interviews I questioned members about their own perspectives on decision-making and then asked them to comment on the observed patterns of decision-making. The interview data was able to illuminate the aspects of Parole Board discourse which functioned as signifiers of the narrative frameworks informing Parole Board decision-making, but which were not always explicitly mentioned within the Board's deliberations (as discussed in detail in chapter 5).

#### *Tracking Change in Parole Board Discourse*

As was mentioned in Chapter 1, one of the main arguments in the thesis relates to penal transformation. By gaining access to observe the Parole Board only over a three month period, this made it difficult to discern whether any changes had taken place in the practice of the Board. Ideally a further period of observation should have been undertaken (possibly around two years later, given the timescale of the PhD).

However it was possible to track whether any changes had occurred through reviewing the annual reports of the Parole Board which have always contained information about factors the Board considers to important in decision-making. As was stated in chapter 5, the theme of risk has been reiterated year after year,

suggesting continuity of practice. Similarly two of the Parole Board interviewees (see below) were very long-standing members of the Board and each confirmed that they had discerned no changes in practice in their period of service (as stated in chapter 5).

#### *Broader Limitations of Data*

As was noted in the thesis, the data derived from the above methods enabled me to explore in detail only those dimensions of the penal system which are linked to Parole, with a particular focus on the social work contribution to parole. (In this regard the thesis does not include consideration of the function of the police, prosecution nor the courts in the penal system.)

In the first chapter of the thesis I argued that the Parole system forms a nodal site within the broader penal system where a number of different policy areas interact. As such it provides a prime source through which to explore how the system functions qua system. My contention would be that the features of systematicity derived from the study of parole and summarised in Chapter 7, can be found in other sites within the penal system but further empirical research would of course be required to confirm this. As was stated in Chapter 7 a key aspect of middle range theory is to generate hypotheses which can be tested empirically (see Merton 1968).

#### Conclusion

I am going to conclude this Annex with a review of the key lessons learnt from undertaking the research: (i) the importance of triangulation of data sources and (ii) the need for theoretical and methodological reflexivity.

Analysis and interpretation of the types of data generated by my research does depend, to a large extent, on the judgement of the individual researcher. Triangulation of data with other data sources (in order to gain a different bearing on the same "research point") can strengthen confidence in the researcher's initial

interpretation (see Jupp 1989). The triangulation of observation and interview data and interview data with documentary review (both in case study C) are key examples of this. Similarly triangulation can help substantiate particular findings as was indicated by triangulating the civil servant interview data with the findings from the interviews with local authority managers, undertaken by Brown et al.

The second of the key lessons learnt from undertaking the research is the importance of theoretical and methodological reflexivity. The notion of reflexivity touches on many aspects of the research process. In particular, the researcher has to be self-consciousness about the conceptual framework which informs the research and which shapes his or her interpretation of findings. He or she must also be aware of the limitation of methods chosen and their relationship with the conceptual framework.

As an ethic of study, middle range theory (set out in chapter 7) encourages theoretical and methodological reflexivity through: its explicit focus on the interplay between theory and method; the manner in which it subjects theories (and specifically hypotheses generated from them) to empirical testing; and the way in which it feeds the results of such empirical testing back into a reconfiguration of theory (see Merton 1968, Zetterberg 1965). Middle range theory also places faith in the construction of networks of theories rather than in the development of a unified theory which attempts to explain all forms of social organisation and change (Merton 1968). While the development of such networks lies beyond the scope of the present thesis, the key tenets of relational theory, set out in chapter 7, are intended to provide a starting point for this process.

## ANNEX 2

### CASE STUDY C: SAMPLES

This Annex provides further information with regard to the characteristics of the Observation and Dossier samples used in Case Study C: Parole Board Decision-making.

#### Observation Sample

The observation sample comprises all *decisions* made on cases considered at the six observed meetings (n=345).<sup>95</sup> At these meetings a number of cases were considered on more than one occasion, therefore the number of decisions is *greater* than the number of individual cases to which the decisions relate (n=311). The characteristics of the sample will be described in respect of *cases* rather than decisions.

The cases are representative of the range of case types on which the Board makes decisions comprising: determinate sentence cases referred for consideration of release on parole (204 cases); indeterminate sentence cases referred for consideration of release on life licence (27 cases); determinate and indeterminate sentence cases referred for an adverse development (where a case previously recommended for [respectively] parole or a pre-release programme, is re-referred to the Parole Board following some kind of adverse incident, such as breach of prison rules or failure to complete counselling) (22 cases); and parole and life licencees referred for consideration of recall to custody (46 cases). A small number of cases were referred for the Board to note information only, these were not discussed in Case Study C (12 cases).

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<sup>95</sup> At these meetings the Board also considered supervision reports on life licencees. Supervision reports do not form a part of the main sample of cases. Although in principle decisions on these reports are the prerogative of the full Parole Board in practice the views of the member (who has responsibility for making recommendations on

**TABLE A.1 TYPES OF CASE**

<b>TYPE OF CASE</b>	<b>Number (n=311)</b>
Determinate Sentence Cases Referred for Consideration of Parole	204
Indeterminate Sentence Cases Referred for Consideration of Release on Life Licence	27
Adverse Developments	22
Cases Referred for Consideration of Recall	46
Determinate and Indeterminate Sentence and Recall Cases Referred to Note Information	12

*(i) Determinate Sentence Cases Referred for Consideration of Release on Parole*

All but three of the determinate sentence cases referred for consideration of release on parole (parole cases) were male<sup>96</sup>. Just under half of the cases (48%) were aged between 21-30. Almost two thirds of parole cases (60%) had been convicted of non-sexual offences of violence and were serving long term sentences of four years or more (60%). The majority of the cases (60%) were at their first review for parole purposes and had a period of less than one year of parole available (56%). Details of these cases are set out in tables A.2 - A.6.

**TABLE A.2 REFERRED FOR RELEASE ON PAROLE: AGE**

<b>Age</b>	<b>Percent (n=204)</b>
16 - 20	8 (17)
21 - 30	48 (98)
31 - 40	30 (62)
41 +	13 (27)

Numbers in brackets: actual number of cases

Percentages do not add up to 100 because of rounding

such reports) were rarely contested. It was therefore not possible to examine the decision-making process through observation.

<sup>96</sup> The three women had been convicted of offences involving violence (1) and Misuse of Drugs Act Offences (2). Two were aged between 31 and 40; one was aged over 41. Two were serving short term sentences of less than four years and one a long term sentence (the latter being the woman convicted of violent offences).

**TABLE A.3 REFERRED FOR RELEASE ON PAROLE: OFFENCE**

<b>Offence</b>	<b>Percent</b> (n=204)
Violence	60 (122)
Sex	11 (23)
Misuse of Drugs Act	18 (36)
Dishonesties	8 (17)
Road Traffic Offences	3 (6)

Numbers in brackets: actual number of cases

**TABLE A.4 REFERRED FOR RELEASE ON PAROLE: CURRENT SENTENCE**

<b>Current Sentence</b>	<b>Percent</b> (n=204)
Less than 4 Years	40 (82)
4 + Years	60 (122)

Numbers in brackets: actual number of cases

**TABLE A.5 REFERRED FOR RELEASE ON PAROLE: REVIEW NUMBER**

<b>Review Number</b>	<b>Percent</b> (n=204)
First	60 (122)
Second	25 (52)
Third or Later	15 (30)

Numbers in brackets: actual number of cases

**TABLE A.6 REFERRED FOR RELEASE ON PAROLE: PAROLE AVAILABLE**

<b>Parole Available</b>	<b>Percent</b> (n=204)
Less than 1 Year	56 (114)
1 Year +	44 (90)

Numbers in brackets: actual number of cases

*(ii) Indeterminate Sentence Cases Referred for Consideration of Release on Life Licence*

All but one of the sample of indeterminate sentence cases (lifers) were male. The lifers were on average slightly older than the parole cases described above, with the majority being between the ages of 31 and 40 years. Most had served between 9 and 15 years in custody and were at their third or later review by the Parole Board. Details of the lifer cases are set out in tables A.7 - A.9.



**TABLE A.7 REFERRED FOR RELEASE ON LIFE LICENCE: AGE**

Age	Percent (n=27)
21 - 30 Years	22 (6)
31 - 40 Years	60 (16)
41+	19 (5)

Numbers in brackets: actual number of cases

Percentages do not add up to 100 because of rounding

**TABLE A.8 REFERRED FOR RELEASE ON LIFE LICENCE: TIME SERVED**

Served	Percent (n=27)
6 - 8 Years	11 (3)
9 - 11 Years	37 (10)
12 - 15 Years	33 (9)
16+	19 (5)

Numbers in brackets: actual number of cases

**TABLE A. 9 REFERRED FOR RELEASE ON LIFE LICENCE: REVIEW NUMBER**

Review Number	Percent (n=26*)
First	15 (4)
Second	23 (6)
Third or Later	62 (16)

\* 1 case: information not available

Numbers in brackets: actual number of cases

### *(iii) Cases Referred for an Adverse Development*

All adverse development cases were male and most were aged between 21 and 30 years (14 cases). Just under half (10 cases) were serving life sentences for murder. The remaining cases had been convicted of other crimes of violence, with equal numbers serving short term (less than 4 years) and long term (more than four years) sentences. Just over half of the adverse development cases (12 cases) were at their second review by the Parole Board and all of the 12 parole cases had less than one year available for parole. Details of the adverse development cases are set out in tables A.10 - A.14.

**TABLE A.10 ADVERSE DEVELOPMENT: AGE**

Age	Number (n=22)
21 - 30	14
31 - 40	6
41 +	2

**TABLE A.11 ADVERSE DEVELOPMENT: OFFENCE**

<b>Offence</b>	<b>Number</b> (n=22)
Murder	10
Other Crimes of Violence	12

**TABLE A.12 ADVERSE DEVELOPMENT: CURRENT SENTENCE**

<b>Current Sentence</b>	<b>Number</b> (n=22)
Life	10
Less than 4 Years	6
4 + Years	6

**TABLE A.13 ADVERSE DEVELOPMENT: REVIEW NUMBER**

<b>Review Number</b>	<b>Number</b> (n=22)
Second	12
Third or Later	10

**TABLE A.14 ADVERSE DEVELOPMENT: PAROLE AVAILABLE (Determinate Sentence Cases Only)**

<b>Parole Available</b>	<b>Number</b> (n=12)
Less than 1 Year	12

*(iv) Recall Cases: Characteristics*

All of the 46 recall cases were male. Recall cases were more evenly spread amongst the different age groups than parole, lifer and adverse development cases. A majority of cases (59%) had been referred to the Board as a result of being charged for further offences. Details of the recall cases are set out in tables A.15 - A.16

**TABLE A.15 RECALL: AGE**

Age	Percent (n=46)
16 - 20 Years	22 (10)
21 - 30 Years	22 (10)
31 - 40 Years	33 (15)
41 + Years	24 (11)

Percentages do not add up to 100 because of rounding  
Numbers in brackets: actual number of cases

**TABLE A.16 RECALL: TYPE OF REFERRAL**

Type Of Referral	Percent (n=46)
Charged Cases	59 (27)
Convicted Cases	13 (6)
Non-Convicted Cases	20 (9)
Breach Cases	7 (3)
Request Return to Custody	2 (1)

Percentages add up to more than 100 because of rounding  
Numbers in brackets: actual number of cases

Dossier Sample

A sub-sample of cases (the dossier sample) was taken for more detailed analysis of the relationship between the information provided in the dossiers and the discussion of the case, as evidenced by the observation transcripts. As was stated in Annex 1, the dossier sample comprises all cases that came before the Board during the observation period, from four selected prison units, as set out in table A.17.

**TABLE A.17 DOSSIER SAMPLE**

<b>Prison</b>	<b>Number Of Cases</b> (n=69)
Closed Female Establishment All Categories of Prisoner	4
Closed Establishment All Categories of Prisoner	30
Open Establishment Young Adult Male Offenders (aged 16 - 21)	8
Semi Open Establishment Adult Male Prisoners with Security Category C or D	27

*(i) Dossier Sample: Characteristics of Cases*

All but four of the dossier sample were male (see table A.17 above) and most were aged between 31 and 40 years (45%). The majority of the dossier sample (55%) had been referred for consideration of release on parole. A high proportion of the sample had been convicted of offences involving violence (45% convicted of murder and serving life sentences; 35% convicted of other non sexual crimes of violence and serving mostly short term sentences). Details of the dossier sample are set out in tables A.18 - A.21

**TABLE A. 18 DOSSIER SAMPLE AGE**

Age	Percent  (n=69)
16 - 20 Years	3 (2)
21 - 30 Years	36 (25)
31 - 40 Years	45 (31)
41 + Years	16 (11)

Numbers in brackets: actual number of cases

**TABLE A. 19 DOSSIER SAMPLE: REASON FOR REFERRAL**

Reason for Referral	Percent  (n=69)
Release on Parole	55 (38)
Release on Life Licence	39 (27)
Adverse Development	6 (4)

Numbers in brackets: actual number of cases

**TABLE A.20 DOSSIER SAMPLE OFFENCE**

Offence	Percent  (n=69)
Murder	45 (31)
Violence	35 (24)
Sex	4 (3)
Misuse of Drugs Act	6 (4)
Dishonesties	9 (6)
Road Traffic Offences	1 (1)

Numbers in brackets: actual number of cases

**TABLE A.21 DOSSIER SAMPLE CURRENT SENTENCE**

Current Sentence	Percent (n=69)
Life	45 (31)
Less than 4 Years	33 (23)
4 + Years	22 (15)

Numbers in brackets: actual number of cases

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